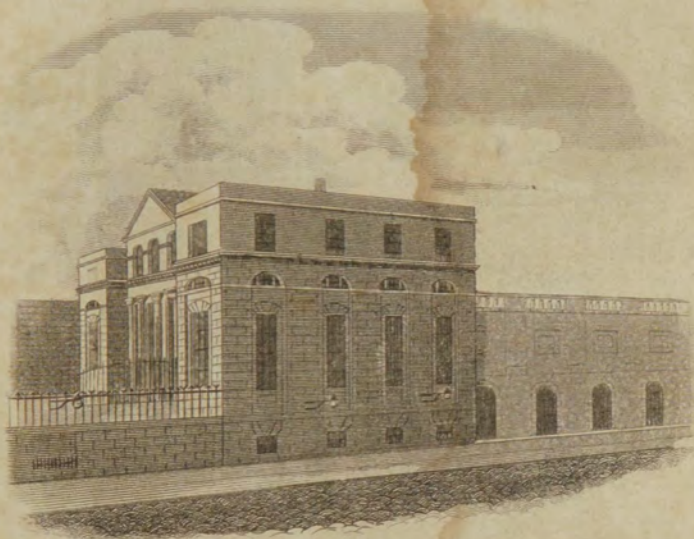


SIR W. BLACKSTONE.

*London. Published by Tho<sup>s</sup>. Kelly, 17, Paternoster Row, Sep. 11<sup>th</sup> 1820.*



THE  
*Cyclopaedia of Law*  
or the Correct  
BRITISH LAWYER  
BY  
*John Henry Addington Esq.*



THE SESSIONS HOUSE,  
(Old Bailey)

Pub.<sup>d</sup> by T. Kelly, 17, Paternoster Row.  
London





THE  
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 OR, THE CORRECT  
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LONDON:

Published by THOMAS KELLY, 17, Paternoster Row.

1824.



## PREFACE.

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IT has long been a matter of regret with those who cast an observant eye on the enlightened character of the British nation, that the study of legislation, both in a theoretical and practical sense, is discarded from our seminaries; and, instead of becoming an important part of the education of our youth, is rejected as unworthy of notice, and is considered as a wanton sacrifice of valuable time, which ought to be employed in more useful and substantial pursuits. When, however, the present constitution of society is considered, in which there are few individuals who are not more or less concerned in litigation, the necessity of a correct knowledge of the leading points of law, which have a direct bearing on the common transactions of life, becomes at once apparent; and the advantages are too evident to require any recommendatory argument.

It must, however, be confessed, that the study of law, taken in its extended sense, possesses so little of an inviting character, that few persons, who do not actually intend to make it their profession as the means of their livelihood, can be induced to wade through the enormous mass of dry and uninteresting matter, which the student meets



with on his journey through the intricate labyrinth of the laws, and which is in general so little consistent with the natural gaiety and buoyant dispositions of the youthful advocate for legal eminence. It must also be taken into consideration, that the purchase of law books, which treat of the rights of property; the intricate cases of trade and commerce; the differences of landlord and tenant, and the other relations of life which draw an individual more or less into the ruinous vortex of litigation, is beyond the reach of the generality of persons, and they are thus unavoidably kept in ignorance of those essential and necessary legal points, which ought to be their guide in the management of their various pursuits.

The expediency, therefore, of digesting the laws of England under single heads, and bringing them into a simple but luminous focus, possesses too many positive advantages to admit a question of the excellence of the undertaking. The voluminous amplitude of those books which contain our system of jurisprudence is thereby reduced; the technicalities, not to call them the jargon, which distinguish and disfigure both our civil and criminal law, and which are only comprehensible to the classical scholar, are expunged; and the whole becomes so clear and simplified, as to be intelligible to the meanest capacity.

A nation, whose constitution is founded on the principles of liberty; whose commerce is extended over the whole circumference of the globe; whose internal wealth, as consisting in landed property and monied interests, is

great, almost beyond example; together with its never failing concomitant luxury, must necessarily furnish continual occasion for the creation of new laws, in order to ascertain the rights of individuals, which were before unattended to, because such situations were unknown; to adjust the nice distinctions with regard to property, occasioned by the civil intercourses and alliances of families; the negligence and profusion of the dissipated; the inattention of some, and the rapaciousness of others; the concerns of commerce; the interests of those who compose the legislative part of government, and those of the body of the people. Hence arises the multiplication of written law, and of the decisions founded thereon; and hence it is that the statute law, during the present reign, is in bulk equal to all the statutes from Magna Charta to the decease of Queen Anne, a period of five hundred years. The late Lord Stanhope, who up to the hour of his death, was employed in a revision of the statute law; declared it in its present shape to be almost a disgrace to the country, and beyond the power of the most retentive memory to remember. The simplification therefore of the leading laws of our Statute Book becomes a great desideratum, and cannot fail of meeting with the support and countenance of the British public.

That the laws of England are now rescued from the perplexity and intricacy in which they were formerly involved; that the principles on which they are built are traced, and shewn to be founded on impartial justice and

right reason; that they are proved to be uniform and consistent with themselves, and although branched out into an almost infinity of points, yet that each part contributes, to form one uniform mode; that they are perfectly well calculated to be made the pursuit of gentlemen of liberal fortune, who cultivate an acquaintance with the *Belles Lettres*, as well as to constitute the lucubrations of the law student, who studies them professionally, is owing to the indefatigable study, to the penetrating acuteness and elegant pen of Sir William Blackstone, in whom were happily united depth of thought, clearness of arrangement, consummate knowledge, and elaborate composition. Although modern times have not produced a Justinian to form a regular code of laws, from indigested, dry, and endlessly copious materials, yet we have seen a private man effect so arduous a work in the most complete and satisfactory manner, hereby confirming what a learned writer observed, two centuries ago, "Of law," says he, "no less can be acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power." Nor should it be considered as panegyric to say, that this accomplished lawyer has done to the laws of England, what Newton did to the laws of nature and Locke to those of human intelligence.

Neither is it to this learned judge only that the public at large are indebted for that knowledge which respects



our dearest and most essential interests as members of society. The skilful, accurate, and judicious Dr. Burn is entitled to the warmest acknowledgments for those practical arrangements which he has made of the laws of England, which have been found of the most essential service in regulating the course of justice, and ascertaining points of general concernment. The author of the following work is by no means ashamed to acknowledge his own obligations to these two respectable law authorities: solicitous as he may be to gain the suffrages of mankind in his favor, he does not wish to pluck the laurels from another's brow; for next to the pleasure of having acted meritoriously ourselves, is that of bestowing due praise on those who have eminently excelled.

It appeared to the author of the following Cyclopædia of Law, that no selection could be made from the venerable pile of law learning, and precedents more generally important and useful, than from the authorities which he has now quoted; he is therefore inclined to hope, that what is the result of those studies, which have been prosecuted with a well meant design, will meet with a candid reception, for if the great bulk of the body of the laws of England is generally complained of as a public grievance, every attempt to lighten it, gives him reason to hope that the public will be prepossessed in its favor.

In regard to the general arrangement and correctness of the following work, any self-eulogium on the part of the author, would not only be premature, but superfluous.

He wishes only to be tried by the test of excellence, and by a fair and impartial comparison with every work extant upon the same subject. The alphabetical arrangement of the different heads will, he trusts, be found to possess peculiar advantages, as affording immediate facility in cases of reference, and rendering the work at the same time more complete and full. The most indefatigable assiduity has been exercised in obtaining all the acts of parliaments of the last session which have any reference to the enactment of new laws, or to the repeal of old ones; and although this step has been attended with considerable expense, yet it has been cheerfully overlooked, in order to stamp upon this work the character of general utility and correctness, and to render it the most excellent of the kind of the present day

A

# TREATISE

ON THE

## LAW OF ENGLAND.

—♦♦♦—

THE municipal law of England, or the rule of civil conduct prescribed to the inhabitants of that kingdom, may with sufficient propriety be divided into two kinds: *lex non scripta*, the unwritten or common law; and *lex scripta*, the written or statute law.

The *lex non scripta*, or unwritten law, includes not only general customs, or the common law properly so called; but also the particular customs of certain parts of the kingdom, and likewise those particular laws that are by custom observed only in certain courts and jurisdictions.

In calling these parts of the law *leges non scriptæ*, we would not be understood as if all those laws were at present merely oral, or communicated from the former ages to the present solely by word of mouth. It is true, indeed, that, in the profound ignorance of letters which formerly overspread the whole western world, all laws were entirely traditional; for this plain reason, that the nations among which they prevailed had but little idea of writing. Thus the British as well as the Gallic druids committed all their laws, as well as all their learning, to memory; and it is said of the primitive Saxons here, as well as their brethren on the continent, that *leges sola memoria et usu retinebant*. But, with us at present, the monuments and evidences of our legal customs are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in the treatises of learned sages of the profession, preserved and handed down to us from times of the highest antiquity. We therefore style these parts of our law *leges non scriptæ*, because their original institution and authority are not set down in writing, as acts of parliament are; but they receive their binding power, and the force of laws, by long and immemorial usage, and by their universal reception throughout the kingdom; in like manner as Aulus Gellius defines the *jus non scriptum* to be that which is *tacito et illiterato hominum consensu et moribus expressum*.

Our ancient lawyers, and particularly Fortescue, insist, with abundance of warmth, that these customs are as old as the primitive Britons, and continued down, through the several mutations of



government and inhabitants, to the present time unchanged and unadulterated. This may be the case as to some. But in general, as Mr. Selden in his notes observes, this assertion must be understood with many grains of allowance; and ought only to signify, as the truth seems to be, that there never was any formal exchange of one system of laws for another; though doubtless by the intermixture of adventitious nations, the Romans, the Picts, the Saxons, the Danes, and the Normans, they must have insensibly introduced and incorporated many of their own customs with those that were before established; thereby, in all probability, improving the texture and wisdom of the whole, by the accumulated wisdom of divers particular countries.

Mr. Spence, on the other hand, (Essay on the Origin of the English Laws,) would derive almost the whole of our constitution from the Romans; he is at least of opinion, "that much more of what is called English is truly Roman than is generally admitted, and that any thing which may call the attention of the professors of the English law to the Justinian collections must be useful." Mr. Spence proceeds to make out his case in the following terms:

"Of the state of Britain prior to the arrival of Cæsar we have little information, but that little is all perhaps that it were useful to know. There were two species of authority recognised among the Britons, the military and the sacerdotal. Military authority had formerly been enjoyed by kings; but the form of government having been changed, the general was chosen, in case of necessity, by the voice of the people. The priests, or druids, were in a manner secluded from the rest of the inhabitants, they having the sole power of electing the members of their body. In their breasts alone were deposited the few maxims to which experience had given the force of laws, of which also they were the sole dispensers. The people were totally employed in agricultural pursuits or war.

"Cæsar arrived about 100 years before the Christian era; he conquered the rude and unprotected courage of the natives, but left the island with the character of having discovered rather than conquered it. Britain was neglected by Augustus and Tiberius. Caligula proceeded no further than to threats. Under Claudius and Nero, about sixty years after Christ, arose Caractacus and Boadicea, the avengers and protectors, for a while, of the liberties of their country; but, when they were extinguished, the doom of Britain was fixed, and, after a succession of ineffectual but desperate struggles, the emperors succeeded, by the same means as had proved successful in regard to the countries already under their yoke, in reducing into the form of a Roman province the whole of the island south of the Grampian mountains.

"Let us observe how far the measures pursued by the Romans, for the reducing and preserving in subjection the provinces of their empire, affected the laws and constitution of the country subdued. It was a custom among the Romans, from the commencement of their conquests, as soon as a nation was subdued, to allot a part of

their territory to a number of Roman citizens. These built a town, if one were not already constructed, to serve for their habitation, and as a refuge in case of attack. These towns, or colonies, were placed at convenient distances about the frontier; and *becaræ*, as they were intended to be, defences against the incursions of enemies on the territory of the mother country. At first, when every man was a soldier, the colonies were supplied from the bulk of the Roman people indiscriminately. Shortly after the destruction of Carthage, when, from the extent of the Roman dominions, standing armies became necessary, veterans were placed in the colonies, and it became necessary for the Romans to adopt other measures for preserving their conquests, one of these was by quartering their legionaries or regular troops on the inhabitants. A chapter in the code of the Emperor Theodosius, which has for title "The Rights of Hospitality," directs, that, wheresoever a Roman army might be stationed, one-third of the accommodations of every householder should be allotted to the soldier quartered upon him; a general was entitled to enjoy two-thirds. A new system of colonization also was adopted; whole legions, with their tribunes, centurions, and subordinate officers, were placed in colonies, and tilled the land committed to them for their support: the emperors sometimes added slaves and implements of husbandry. The condition of these grants was to preserve the colony from being invaded by any enemy to the empire. A colony thus organized, by a similarity of habits, and by their mutual harmony, formed, as it is remarked by Tacitus, a species of republic; and from them the principal cities in modern Europe have to date their origin. No sooner was a tract of land conquered, and strong holds established, than the general contrived all possible means to disseminate the Roman language and laws among the inhabitants. Tacitus and Cæsar mention that Gaul was not subdued until Roman manners, arts, and connexions, had been introduced among the natives. In Germany, Germanicus, under Augustus and Tiberius; in Britain, Suetonius Paullinus, under Claudius and Nero; and Agricola, under Vespasian, Titus, and Domitian, succeeded in completely subduing their respective provinces, by accomplishing what remained to be perfected, namely, the establishing among the natives Roman arts, customs, and laws. The Britons, (says Tacitus) warlike from their fierce and uncivilized mode of life, were tamed by the introduction of luxury and ease. Agricola was seen exhorting them to employ themselves in the construction of halls and temples, and exciting emulation in the work by praise or censure. He took care that the children of their princes should be instructed in the Roman arts and sciences, and urged them to the task by commending the genius of the Britons as superior to that of the Gauls, their rivals; and so completely did he succeed, that at length the nation, who had detested the language of the Romans, was found vying with their conquerors for the palm of eloquence.

"At the conquest of Britain, the druids were almost wholly exterminated; and the Roman general or prefect here, as in the other



provinces of the empire, became the sole distributor of justice. The strict administration of justice in the provinces was rigidly enforced by the emperors; few but those who had filled with honour a judicial capacity in Rome were appointed to a command, and the just complaints of the provincials were seldom disregarded; more frequently they were avenged by the emperors in the most ferocious manner.

“ Britain continued, from the departure of Agricola to the year 448, when the Romans took their final leave, tranquil, and accommodated to the Roman yoke. They were defended by the Roman soldiers, who were quartered on them as guests, in the manner before described; their own youth were serving in the armies of distant provinces; and, more particularly to turn the attention of those at home from military employments by the appearance of security, the emperors Adrian and Severus built for them the two walls or defences across the island, the remains of which are now to be seen. From the conquest completed by Agricola, until the departure of the Romans, Roman lawyers, as prefects and assessors, or inferior judges, administered justice in the principal colonies and towns. Among the rest, it is recorded that Papinian, who was styled the Prince of Roman lawyers, held his forum, as pretorian prefect under the Emperor Severus, at York; to him we may add, on the authority of our distinguished Selden, Ulpian and Paullus, names as famous to the Romans, as Coke or Hale with us. The laws of Rome then were uninterruptedly administered in Britain for a period of 300 years; and, when we call to mind the few traces of judicial polity, which existed among the Britons in their original rude and unsettled state, the character of the Roman laws, and the length of time that they were here administered, we can hardly hesitate in pronouncing, that the Roman laws must have been, at the period of the Saxon conquest, the common or general law of the island.

“ The state of the inhabitants of Britain, on the departure of the Roman troops from among them, furnishes an instructive lesson as to the miserable state of national degradation, which follows on the extinction of those turbulent but manly virtues, which are called forth by times of danger and war. The Picts and Scots, without discipline, and scarcely armed but with their ferocity, massacred, at their will, the polished and effeminate inhabitants, whom I no longer call Britons, because of the intermixture of Romans which a period of 300 years’ subjection must have introduced among them, particularly in times when no man, who was at all distinguished by his property, his virtues, or his vices, was safe in the Roman capital. Content to be slaves, but terrified at the prospect of continual torture and death, the inhabitants, about the year 660, following the example of some of their continental neighbours, called to their assistance the Saxons and other northern hordes, dwelling on the coasts of the Baltic. These delivered Britain from its ravagers, and ultimately seized on the sovereignty as the reward of their services; giving to the nation the name of *England*. Not that the



Saxons at first dispossessed the natives of all their land or property. Their original claim was the same that was made by the Goths and Burgundians, their former neighbours, in the conquest of the continent of Europe; they had executed the office the Roman soldiers had used to perform; they claimed therefore a similar recompence, namely, to be received as guests in the houses of the landed proprietors; however, they do not appear to have been content with one-third only of the accommodations; the Burgundians, Ostrogoths, and Visigoths, universally claimed two-thirds. In the absence of testimony as to the precise amount, we may conclude that the Angles and Saxons took nearly the same. When the country was cleared of its ravagers, the soldiers began to look for a permanent settlement, and the Anglo-Saxon, like the Goth and the Burgundian, claimed and received, in full ownership, the share of the house, land, and slaves, which he had enjoyed as a guest; and this he took as his right, free from all conditions, excepting those to which every subject must be liable, unless the tacit compact, that he was to defend the Romano-Britons from the ravages of the Picts and Scots, may be called a condition. This was a mode in which the Goths, Burgundians, and the greater part of the other continental settlers, founded their several kingdoms, as may be seen from their codes, and which, we may remark, contain scarcely any thing in the shape of legislation that is not clearly Roman. The Anglo-Saxon laws are not quite so explicit, and the struggle which ensued in consequence of the encroachments of the Saxons may be the cause of this; but, from the extraordinary similarity in the tenor of the continental and Anglo-Saxon laws and chronicles, it is clear that the same system in their settlements was pursued by all the conquerors of Europe.

“I am aware that it has been maintained by some of the most distinguished of our writers, particularly by the eloquent and learned Sir William Blackstone, that the conquerors of Europe seized on the conquered lands, and parcelled them out among the officers and soldiers, in the various stages of subordination, annexing to the grant a condition of military service; and this supposed division of lands has been made use of most ably, and, were it true, most successfully, to account for and explain the laws which, under the denomination of the feudal system, were established in Europe 400 years after the general conquest by the northern hordes. The codes of all the conquerors prove that this was not the case; and the less ingenious but most true account of the origin of the feudal system is to be drawn, I apprehend, from the state of manners and sentiments introduced among the provinces of the empire, by the general diffusion of the Roman system of patronage.

“In the general settlement I have just mentioned, the victorious leader became a *præses*, or *proconsul*, in authority, with this difference, that he acknowledged no superior. Clovis, the founder of the French monarchy, even accepted from Justinian the proconsular robe. Content, perhaps, at first, with forming a

court similar to that of a Roman proconsul, the general, after he had assumed the title of king, surrounded himself also with the officers of royalty; and his more intimate adherents were rewarded with a part of his domain, and were dignified with the same, or offices similar to those, which were exercised about the person of the emperor. From this source principally has flowed the present constitution of Britain."

Notwithstanding this supposed uniformity of law, the local customs of the several provinces of the kingdom were grown so various in the time of King Alfred, that he found it expedient to compile his dome-book, or *liber judicialis*, for the general use of the whole kingdom. This book is said to have been extant so late as the reign of Edward IV. but is now unfortunately lost. It contained, we may probably suppose, the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. Thus much may at least be collected from that injunction to observe it, which we find in the laws of King Edward the Elder, the son of Alfred: *Omnibus qui reipublicæ præsumunt etiam atque etiam mando, ut omnibus æquos se præbeant iudices perinde ac in judiciali libro scriptum habetur: nec quiquam formident quin jus commune audacter liberèque dicant.*

But the irruption and establishment of the Danes in England, which followed soon after, introduced new customs, and caused this code of Alfred in many provinces to fall into disuse, or at least to be mixed and debased with other laws of a coarser alloy. So that, about the beginning of the eleventh century there were three principal systems of laws prevailing in different districts. 1. The *Mercen Lage*, or Mercian Laws, which were observed in many of the inland counties, and those bordering on the principality of Wales, the retreat of the ancient Britons; and therefore very probably intermixed with the British or Druidical customs. 2. The *West Saxon Lage*, or Laws of the West Saxons, which obtained in the counties to the south and west of the island, from Kent to Devonshire. These were probably much the same with the laws of Alfred above mentioned, being the municipal law of the far most considerable part of his dominions, and particularly including Berkshire, the seat of his peculiar residence. 3. The *Dane Lage*, or Danish Law, the very name of which speaks its original and composition. This was principally maintained in the rest of the midland counties, and also on the eastern coast, the part most exposed to the visits of that piratical people. As for the very northern provinces, they were at that time under a distinct government.

Out of these three laws, Roger Hoveden and Ranulphus Cestrensis inform us, King Edward the Confessor extracted one uniform law, or digest of laws, to be observed throughout the whole kingdom; though Hoveden and the author of an old manuscript chronicle assure us, likewise, that this work was projected and begun by his grandfather King Edgar. And indeed a general digest of the same nature has been constantly found expedient, and therefore put in practice, by



other great nations, which were formed from an assemblage of little provinces, governed by peculiar customs. As in Portugal, under King Edward, about the beginning of the 15th century; in Spain, under Alonzo X. who about the year 1250 executed the plan of his father St. Ferdinand, and collected all the provincial customs into one uniform law, in the celebrated code entitled *Las Partidas*; and in Sweden, about the same era, a universal body of common law was compiled out of the particular customs established by the laghman of every province, and entitled the *Land's Lagh*, being analagous to the common law of England.

Both these undertakings of King Edgar and of Edward the Confessor, seem to have been no more than a new edition or fresh promulgation, of Alfred's code or dome-book, with such additions and improvements as the experience of a century and a half had suggested. For Alfred is generally styled by the same historians, the *legum Anglicanarum conditor*, as Edward the Confessor is the *restitutor*. These, however, are the laws which our histories so often mention under the name of the Laws of Edward the Confessor; which our ancestors struggled so hard to maintain under the first princes of the Norman line; and which subsequent princes so frequently promised to keep and to restore, as the most popular act they could do, when pressed by foreign emergencies or domestic discontents. These are the laws that so vigorously withstood the repeated attacks of the civil law; which established in the 12th century a new Roman empire over most of the states of the continent; states that have lost, and perhaps upon that account, their political liberties; while the free constitution of England, perhaps upon the same account, has been rather improved than debased. These, in short, are the laws which gave rise and origin to that collection of maxims and customs which is now known by the name of the common law: a name either given to it in contradiction to other laws, as the statute-law, the civil-law, the law-merchant, and the like; or, more probably, as a law common to all the realm, the *jus commune*, or *fol-cright*, mentioned by King Edward the Elder, after the abolition of the several provincial customs and particular laws before mentioned.

But, though this is the most likely foundation of this collection of maxims and customs, yet the maxims and customs so collected are of higher antiquity than memory or history can reach; nothing being more difficult than to ascertain the precise beginning and first spring of an ancient and long-established custom. Whence it is, that in our law the goodness of a custom depends upon its having been used time out of mind; or, in the solemnity of our legal phrase, time whereof the memory of man runneth to the contrary. And what Lord Hale says, in his History of the Common Law, p. 55, is undoubtedly true, that "the original of the common law is as undiscoverable as the head of the Nile." This it is that gives it weight and authority; and of this nature are the maxims and customs which compose the common law, or *lex non scripta*, of this kingdom.

This (unwritten or) common law is properly distinguishable in



three kinds: 1. General customs; which are the universal rule of the whole kingdom, and form the common law in its stricter and more usual signification. 2. Particular customs; which for the most part affect only the inhabitants of particular districts. 3. Certain particular laws; which by custom are adopted and used by some particular courts, of pretty general and extensive jurisdiction.

1. As to general customs, or the common law properly so called; this is that law by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. This, for the most part, settles the course in which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligation of contracts; the rules of expounding wills, deeds, and acts of parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment, and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, that there shall be four superior courts of record, the chancery, the king's bench, the common pleas, and the exchequer; that the eldest son alone is heir to his ancestor; that property may be acquired and transferred by writing; that a deed is of no validity unless sealed and delivered; that wills shall be construed more favourably, and deeds more strictly; that money lent upon bond is recoverable by action of debt; that breaking the public peace is an offence, and punishable by fine and imprisonment: all these are doctrines that are not set down in any written statute or ordinance; but depend merely upon immemorial usage, that is, upon common law, for their support.

Some have divided the common law into two principal grounds or foundations: 1. Established customs; such as that, where there are three brothers, the eldest brother shall be heir to the second, in exclusion of the youngest; and, 2. Established rules and maxims; as, "that the king can do no wrong, that no man shall be bound to accuse himself," and the like. But these seem to be one and the same thing; for the authority of these maxims rests entirely upon general reception and usage; and the only method of proving that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it.

But here a very natural, and very material, question arises: How are these customs or maxims to be known, and by whom is their validity to be determined? The answer is, By the judges in the several courts of justice. They are the depositaries of the laws; the living oracles who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. Their knowledge of that law is derived from experience and study; from the *viginti annorum lucubrationes*, which Fortescue mentions; and from being long personally accustomed to the judicial decisions of their predecessors. And indeed these judicial decisions are the principal and most authoritative evidence that can be given, of the

existence of such a custom as shall form a part of the common law. The judgment itself, and all the proceedings previous thereto, are carefully registered and preserved, under the name of records, in public repositories set apart for that particular purpose; and to them frequent recourse is had when any critical question arises, in the determination of which former precedents may give light or assistance. And therefore, even so early as the conquest, we find the *præteritorum memoria eventorum* reckoned up as one of the chief qualifications of those who were held to be *legibus patriæ optime instituti*. For it is an established rule to abide by former precedents where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which is not in the breast of any subsequent judge to alter or vary from according to his private sentiments; he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. Yet this rule admits of exception where the former determination is most evidently contrary to reason; much more if it be contrary to the Divine law. But even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was bad law, but that it was not law; that is, that it is not the established custom of the realm, as has been erroneously determined. And hence it is that our lawyers are, with justice, so copious in their encomiums on the reason of the common law; that they tell us, that the law is the perfection of reason, that it always intends to conform thereto, and that what is not reason is not law. Not that the particular reason of every rule in the law can at this distance of time be always precisely assigned; but it is sufficient that there be nothing in the rule flatly contradictory to reason, and then the law will presume it to be well-founded. And it hath been an ancient observation in the laws of England, that whenever a standing rule of law, of which the reason perhaps could not be remembered or discerned, hath been wantonly broke in upon by statutes or new resolutions, the wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation.

The doctrine of the law then is this: That precedents and rules must be followed, unless flatly absurd or unjust; for, though their reason be not obvious at first view, yet we owe such a deference to former times as not to suppose they acted wholly without consideration. To illustrate this doctrine by examples. It has been determined, time out of mind, that a brother of the half-blood shall never succeed as heir to the estate of his half-brother, but it shall rather escheat to the king, or other superior lord. Now this is a



positive law, fixed and established by custom; which custom is proved by judicial decisions, and therefore can never be departed from by any modern judge without a breach of his oath and the law. For herein there is nothing repugnant to natural justice, though the artificial reason of it, drawn from the feodal law, may not be quite obvious to every body. And therefore, on account of a supposed hardship upon the half-brother, a modern judge might wish it had been otherwise settled; yet it is not in his power to alter it; and if any court were now to determine that an elder brother of the half-blood might enter upon and seize any lands that were purchased by his younger brother, no subsequent judges would scruple to declare that such prior determination was unjust, was unreasonable, and therefore was not law. So that the law, and the opinion of the judge, are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may mistake the law. Upon the whole, however, we may take it as a general rule, "That the decisions of courts of justice are the evidence of what is common law;" in the same manner as, in the civil law, what the emperor had once determined was to serve as a guide for the future.

The decisions therefore of courts are held in the highest regard, and are not only preserved as authentic records in the treasuries of the several courts, but are handed out to public view in the numerous volumes of reports which furnish the lawyer's library. These reports are histories of the several cases, with a short summary of the proceedings, which are preserved at large in the record; the arguments on both sides, and the reasons the court gave for its judgment, taken down in short notes by persons present at the determination. And these serve as indexes to, and also to explain, the records; which always, in matters of consequence and nicety, the judges direct to be searched. The reports are extant in a regular series from the reign of King Edward II. inclusive; and from his time to that of Henry VIII. were taken by the prothonotaries, or chief scribes of the court, at the expense of the crown, and published annually, whence they are known under the denomination of the Year-books. And it is much to be wished that this beneficial custom had, under proper regulations, been continued to this day; for though King James I. at the instance of Lord Bacon, appointed two reporters, with a handsome stipend, for this purpose, yet that wise institution was soon neglected; and, from the reign of Henry VIII. to the present time, this task has been executed by many private and contemporary hands; who, sometimes through haste and inaccuracy, sometimes through mistake and want of skill, have published very crude and imperfect (perhaps contradictory) accounts of one and the same determination. Some of the most valuable of the ancient reports are those published by Lord Chief Justice Coke, a man of infinite learning in his profession, though not a little infected with the pedantry and quaintness of the times he lived in, which appear strongly in all his works. However, his



writings are so highly esteemed, that they are generally cited without the authors name. His Reports, for instance, are styled, "The Reports;" and in quoting them we usually say, 1 or 2 *Rep.* not 1 or 2 *Coke's Rep.* as in citing other authors. The reports of Judge Croke are also cited in a peculiar manner, by the name of those princes in whose reigns the cases reported in his three volumes were determined; viz. Queen Elizabeth, King James, King Charles I. as well as by the number of each volume; for sometimes we call them 1, 2, and 3, *Cro.* but more commonly *Cro. Eliz. Cro. Jac.* or *Cro. Car.*

Besides these reporters, there are also other authors to whom great veneration and respect are paid by the students of the common law. Such are Glanvil and Bracton, Britton and Fleta, Littleton and Fitzherbert, with some others of ancient date, whose treatises are cited as authority, and are evidence that cases have formerly happened in which such and such points were determined, which are now become settled and first principles. One of the last of these methodical writers in point of time, whose works are of any intrinsic authority in the courts of justice, and do not entirely depend on the strength of their quotations from older authors, is the same learned judge we have just mentioned, Sir Edward Coke, who hath written four volumes of *Institutes*, as he is pleased to call them, though they have little of the institutional method to warrant such a title. The first volume is a very extensive comment upon an excellent little treatise of tenures, compiled by Judge Littleton in the reign of Edward IV. This comment is a rich mine of valuable common-law learning, collected and heaped together from the ancient reports and year-books, but greatly defective in method. It is usually cited either by the name of *Co. Litt.* or as 1 *Inst.* The second volume is a comment upon many old acts of parliament, without any systematical order; the third, a more methodical treatise of the pleas of the crown; and the fourth, an account of the several species of courts: these are cited as 2, 3, or 4, *Inst.* without any author's name, an honorary distinction, which, as we observed, is paid to the works of no other writer, the generality of reports and other tracts being quoted in the name of the compiler, as 2 *Ventris*, 4 *Leonard*, 1 *Sidersin*, and the like.

And thus much for the first ground and chief corner-stone of the laws of England, which is generally immemorial custom, or common law, from time to time declared in the decisions of the courts of justice.

The Roman law, as practised in the times of its liberty, paid also a great regard to custom, but not so much as our law; it only then adopting it when the written law was deficient; though the reasons alledged in the Digest will fully justify our practice in making it of equal authority with, when it is not contradicted by, the written law. "For, since (says Julianus) the written law binds us for no other reason but because it is approved by the judgment of the people, therefore those laws which the people have approved with-

out writing ought also to bind every body. For where is the difference, whether the people declare their assent to a law by suffrage, or by a uniform course of acting accordingly?" Thus did they reason while Rome had some remains of her freedom; but when the imperial tyranny came to be fully established, the civil laws speak a very different language. *Quod principi placuit legis habet vigorem, cum populus ei et in eum omne suum imperium et potestatem conferat*, says Ulpian. *Imperator solus et conditor et interpret legis existimatur*, says the Code. And again, *Sacrilegii instar est rescripto principis obviari*. And indeed it is one of the characteristic marks of British liberty, that the common law depends upon custom; which carries this internal evidence of freedom along with it, that it probably was introduced by the voluntary consent of the people.

II. The second branch of the unwritten laws of England are particular customs, or laws which affect only the inhabitants of particular districts.

These particular customs, or some of them, are without doubt the remains of that multitude of local customs before mentioned, out of which the common law, as it now stands, was collected, at first by King Alfred, and afterwards by King Edgar, and by Edward the Confessor; each district mutually sacrificing some of its own special usages, in order that the whole kingdom might enjoy the benefit of one uniform and universal system of laws. But, for reasons that have been now long forgotten, particular counties, cities, towns, manors, and lordships, were indulged with the privilege of abiding by their own customs, in contradistinction to the rest of the nation at large; which privilege is confirmed to them by several acts of parliament.

Such is the custom of gavelkind in Kent, and some other parts of the kingdom, (though perhaps it was also general till the Norman conquest,) which ordains, among other things, that not the eldest son only of the father shall succeed to his inheritance, but all the sons alike; and that, though the ancestor be attainted and hanged, yet the heir shall succeed to his estate, without any escheat to the lord. Such is the custom that prevails in divers ancient boroughs, and therefore called borough English, that the youngest son shall inherit the estate, in preference to all his elder brothers. Such is the custom in other boroughs, that a widow shall be entitled, for her dower, to all her husband's lands; whereas at the common law she shall be endowed of one-third part only. Such also are the special and particular customs of manors, of which every one has more or less, and which bind all the copyhold tenants that hold of the said manors. Such likewise is the custom of holding divers inferior courts, with power of trying causes in cities and trading towns; the right of holding which, when no royal grant can be shown, depends entirely upon immemorial and established usage. Such, lastly, are many particular customs within the city of London, with regard to trade, apprentices, widows, orphans, and a variety



of other matters. All these are contrary to the general law of the land, and are good only by special usage, though the customs of London are also confirmed by act of parliament.

To this head may most properly be referred a particular system of customs used only among one set of the king's subjects, called the custom of merchants, or *lex mercatoria*; which, however different from the general rules of the common law, is yet ingrafted into it, and made a part of it; being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions; for it is a maxim of law, that *cuiuslibet in sua arte credendum est*.

The *lex mercatoria*, or the custom of merchants, like the *lex et consuetudo parliamenti*, however, describes only a great division of the law of England. The laws relating to bills of exchange, insurance, and all mercantile contracts, are as much the general law of the land as the laws relating to marriage or murder; but the merchants have been frequently led to suppose that all their new fashions and devices became the law of the land: they ought however to take their law from the courts, and not the courts from the merchants; and, when the law is found inconvenient for the purposes of extended commerce, application ought to be made to parliament for redress; for, as Mr. Justice Foster has observed, (2 *Burr.* 1226.) the custom of merchants is the general law of the kingdom, and therefore ought not to be left to a jury after it has been settled by judicial determinations.

The rules relating to particular customs regard either the proof of their existence; their legality when proved; or their usual method of allowance. And first we will consider the rules of proof.

As to gavelkind and borough English, the law takes particular notice of them; and there is no occasion to prove that such customs actually exist, but only that the lands in question are subject thereto. All other private customs must be particularly pleaded; and as well as the existence of such customs must be shown, as that the thing in dispute is within the customs alledged. The trial in both cases (both to show the existence of the custom, as, "That in the manor of Dale lands shall descend only to the heirs male, and never to the heirs female;" and also to show "that the lands in question are within that manor,") is by a jury of twelve men, and not by the judges, except the same particular custom has been before tried, determined, and recorded in the same court.

The customs of London differ from all others in point of trial; for, if the existence of the custom be brought in question, it shall not be tried by a jury, but by a certificate from the lord mayor and aldermen, by the mouth of their recorder, unless it be such a custom as the corporation is itself interested in, as a right of taking toll, &c. for then the law permits them not to certify on their own behalf. And, when a custom has been once certified by the recorder, the judges will take notice of it, and not suffer it to be certified a second time.

When a custom is actually proved to exist, the next inquiry is



into the legality of it; for if it is not a good custom, it ought to be no longer used. *Malus usus abolendus est*, is an established maxim of the law. To make a particular custom good, the following are necessary requisites;—

1. That it have been used so long, that the memory of man runneth not to the contrary. So that if any one can show the beginning of it within legal memory, that is, within any time since the first year of the reign of Richard I. it is no good custom. For which reason no custom can prevail against an act of parliament; as, if it be pleaded as a custom that every pound of butter shall weigh eighteen ounces instead of sixteen, it is bad, because the 13 and 14 *Car. 2. c. 26.* directs that every pound throughout the kingdom shall weigh sixteen ounces only.

2. It must have been continued. Any interruption would cause a temporary ceasing; the revival gives it a new beginning, which will be within time of memory and thereupon the custom will be void. But this must be understood with regard to an interruption of the right; for an interruption of the possession only for ten or twenty years will not destroy the custom. As if the inhabitants of a parish have a customary right of watering their cattle at a certain pool, the custom is not destroyed, though they do not use it for ten years; it only becomes more difficult to prove; but if the right be any how discontinued for a day, the custom is quite at an end.

3. It must have been peaceable, and acquiesced in; not subject to contention and dispute. For, as customs owe their original to common consent, their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting.

4. Customs must be reasonable; or rather, taken negatively, they must not be unreasonable; which is not always, as Sir Edward Coke says, to be understood of every unlearned man's reason, but of artificial and legal reason, warranted by authority of law. Upon which account a custom may be good, though the particular reason of it cannot be assigned; for it sufficeth, if no good legal reason can be assigned against it. Thus a custom in a parish, that no man shall put his beasts into the common till the 3d of October, would be good; and yet it would be hard to show the reason why that day in particular is fixed upon, rather than the day before or after. But a custom that no cattle shall be put in till the lord of the manor has first put in his is unreasonable, and therefore bad; for peradventure the lord will never put in his, and then the tenants will lose all their profits.

5. Customs ought to be certain. A custom that lands shall descend to the most worthy of the owner's blood is void; for how shall this worth be determined; but a custom to descend to the next male of the blood, exclusive of females, is certain, and therefore good. A custom to pay twopence an acre in lieu of tithes is good; but to pay sometimes twopence, and sometimes threepence, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom to pay a year's improved value for a fine on a copyhold

estate, is good; though the value is a thing uncertain; for the value may at any time be ascertained; and the maxim of law is, *Id certum est, quod certum reddi potest*. But a custom that poor housekeepers shall carry away rotten wood in a chase is bad, being too vague and uncertain. To which we may add, that a custom that poor people shall carry away every thing they can lay their hands on his bad; yet the memory of man runneth not to the contrary.

6. Customs, though established by consent, must be (when established) compulsory; and not left to the option of every man, whether he will use them or no. Therefore a custom that all the inhabitants shall be rated toward the maintenance of a bridge, will be good; but a custom, that every man is to contribute thereto at his own pleasure, is idle and absurd, and indeed no custom at all.

7. Lastly, customs must be consistent with each other. One custom cannot be set up in opposition to another. For, if both are really customs, then both are of equal antiquity, and both established by mutual consent; which, to say of contradictory customs, is absurd. Therefore, if one man prescribes that by custom he has a right to have windows looking into another's garden, the other cannot claim a right by custom to stop up or obstruct those windows; for these two contradictory customs cannot both be good, nor both stand together. He ought rather to deny the existence of the former custom.

Next, as to allowance of special customs. Customs, in derogation of the common law, must be construed strictly: and this rule is founded upon the consideration, that a variety of customs in different places upon the same subject is a general inconvenience; the courts therefore will not admit such customs but upon the clearest proof. Thus, by the custom of gavelkind, an infant of fifteen years may by one species of conveyance (called a deed of feoffment) convey away his lands in fee simple, or for ever. Yet this custom does not empower him to use any other conveyance, or even to lease them for seven years; for the custom must be strictly pursued. So, where there is a custom that lands shall descend to the eldest sister, the courts will not extend this custom to the eldest niece, or to any other eldest female relation, but upon the same authority by which the custom between sisters is supported. And, moreover, all special customs must submit to the king's prerogative. Therefore, if the king purchase lands of the nature of gavelkind, where all the sons inherit equally; yet, upon the king's demise, his eldest son shall succeed to those lands alone. And thus much for the second part of the *leges non scriptæ*, or those particular customs which affect particular persons or districts only.

III. The third branch of them are those peculiar laws which by custom are adopted and used only in certain peculiar courts and jurisdictions. And by these are understood the civil and canon laws.

It may seem a little improper, at first view, to rank these laws



under the head of *leges non scriptæ*, or unwritten laws, seeing they are set forth by authority in their pandects, their codes, and their institutions; their councils, decrees, and decretals; and enforced by an immense number of expositions, decisions, and treatises of the learned in both branches of the law. But this is done after the example of Sir Matthew Hale, because it is most plain, that it is not on account of their being written laws, that either the canon law or the civil law have any obligation within this kingdom; neither do their force and efficacy depend upon their own intrinsic authority; which is the case of our written laws, or acts of parliament. They bind not the subjects of England because their materials were collected from popes or emperors, were digested by Justinian, or declared to be authentic by Gregory: these considerations give them no authority here; for the legislature of England doth not, nor ever did, recognise any foreign power, as superior or equal to it in this kingdom, or as having the right to give law to any the meanest of its subjects. But all the strength that either the papal or imperial laws have obtained in this realm (or indeed in any other kingdom in Europe) is only because they have been admitted and received by immemorial usage and custom in some particular cases, and some particular courts; and then they form a branch of the *leges non scriptæ*, or customary law; or else, because they are in some other cases introduced by consent of parliament, and then they owe their validity to the *leges scriptæ*, or statute law. This is expressly declared in those remarkable words of the statute 25 Hen. 3. c. 21. addressed to the king's majesty: "This your grace's realm, recognising no superior under God but only your grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and ordained, within this realm, for the wealth of the same; or to such other as, by sufferance of your grace and your progenitors, the people of this your realm have taken at their free liberty, by their own consent, to be used among them; and have bound themselves by long use and custom to the observance of the same; not as to the observance of the laws of any foreign prince, potentate, or prelate; but as to the customed and ancient laws of this realm, originally established as laws of the same, by the said sufferance, consents, and custom; and none otherwise."

The history of the Roman law, and of the various degrees of favour with which it has been received in different countries, is a curious and entertaining subject. In England, its introduction was attempted by the bishops and clergy, and was resisted by the nobility and laity, who never relinquished their attachment to the common law. When the ecclesiastics withdrew themselves from the temporal courts in this country, in consequence of their aversion to the municipal law, which they were unable to supersede by the civil and canon law, they introduced the laws of ancient and modern Rome into the spiritual courts of all denominations; in which, as well as in the high courts of chancery, and in the courts of the two

universities, the proceedings are, even now, conformable to the course of the civil law. Though it does not possess the force of authority in the courts of Westminster Hall, it is frequently followed, when an express rule of the common law is wanting; and, when both laws concur, support and explanation have been received from the words of the civil law. Similar, in a great measure, are the nature and extent of its incorporation into the Scotch code. But we must speak of the two branches separately.

1. By the civil law, absolutely taken, is generally understood the civil or municipal law of the Roman empire, as comprised in the Institutes, the Code, and the Digest of the emperor Justinian, and the Novel Constitutions of himself and some of his successors. This system soon fell into neglect and oblivion, till about the year 1130, when a copy of the Digest was found at Amalfi in Italy; which accident, concurring with the policy of the Roman ecclesiastics, suddenly gave new vogue and authority to the civil law, introduced it into several nations, and occasioned that mighty inundation of voluminous comments, with which this system of law, more than any other, is now loaded, and which, from their rapid increase, promise, at no distant period, to acquire a bulk equal to that mass of legal learning, from which Tribonian and his associates compiled the Institutes, the Digest, and the Code.

2. The canon law is a body of ecclesiastical law, relative to such matters as that church either has, or pretends to have, the proper jurisdiction over. This is compiled from the opinions of the ancient Latin fathers, the decrees of general councils, the decretal epistles and bulls of the holy see; all which lay in the same disorder and confusion as the Roman civil law; till, about the year 1151, one Gratian, an Italian monk, animated by the discovery of Justinian's Pandects, reduced the ecclesiastical constitutions also into some method, in three books, which he entitled *Concordia discordantium Canonum*, but which are generally known by the name of *Decretum Gratiani*. These reached as low as the time of Pope Alexander III. The subsequent papal decrees, to the pontificate of Gregory IX. were published in much the same method under the auspices of that pope, about the year 1230, in five books, entitled *Decretalia Gregorii Noni*. A sixth book was added by Boniface VIII. about the year 1298, which is called *Sextus Decretalium*. The Clementine constitutions, or decrees of Clement V. were in like manner authenticated in 1317 by his successor John XXII. who also published twenty constitutions of his own, called *Extravagantes Joannis*; all which in some measure answer to the novels of the civil law. To these have been since added some decrees of latter popes, in five books, called *Extravagantes Communes*. And all these together, Gratian's Decree, Gregory's Decretals, the sixth decretal, the Clementine constitutions, and the extravagants of John and his successors, form the *corpus juris canonici*, or body of the Roman canon law.

Besides these pontifical collections, which during the time of



popery were received as authentic in this island, as well as in other parts of Chistendom, there is also a kind of national canon law, composed of legatine and provincial constitutions, and adapted only to the exigencies of this church and kingdom. The legatine constitutions were ecclesiastical laws, enacted in national synods, held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV. in the reign of King Henry III. about the years 1220 and 1268. The provincial constitutions are principally the decrees of provincial synods, held under divers archbishops of Canterbury, from Stephen Langton in the reign of Henry III. to Henry Chichele in the reign of Henry V. and adopted also by the province of York, in the reign of Henry VI. At the dawn of the reformation, in the reign of Henry VIII. it was enacted in parliament, that a review should be had of the canon law; and, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And, as no such review has yet been perfected, upon this statute now depends the authority of the canon law of England.

As for the canons enacted by the clergy under James I. in the year 1603, and never confirmed in parliament, it has been solemnly adjudged, upon the principles of law and the constitution, that, where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity, whatever regard the clergy may think proper to pay them.

There are four species of courts, in which the civil and canon laws are permitted, under different restrictions, to be used. 1. The courts of the archbishop and bishops, and their derivative officers; usually called Courts Christian, *Curia Christianitatis*, or ecclesiastical courts. 2. The military courts. 3. The courts of admiralty. 4. The courts of the universities. In all, their reception in general, and the different degrees of that reception are grounded entirely upon custom; corroborated in the latter instance by act of parliament, ratifying those charters which confirm the customary law of the universities. It will suffice at present to remark a few particulars relative to them all, which may serve to inculcate more strongly the doctrine laid down concerning them.

And first, The courts of common law have the superintendency over these courts; to keep them within their jurisdictions; to determine wherein they exceed them; to restrain and prohibit such excess; and (in case of contumacy) to punish the officer who executes, and in some cases the judge who enforces, the sentence so declared to be illegal.

The common law has reserved to itself the exposition of all such acts of parliament as concern either the extent of these courts or the matters depending before them. And therefore, if these courts either refuse to allow these acts of parliament, or will expound them in any other sense than what the common law puts upon them, the

king's court at Westminster will grant prohibitions to restrain and control them.

An appeal lies from all these courts to the king, in the last resort; which proves that the jurisdiction exercised in them is derived from the crown of England, and not from any foreign potentate, or intrinsic authority of their own. And, from these three strong marks and ensigns of superiority, it appears beyond a doubt, that the civil and canon laws, though admitted in some cases by custom in some courts, are only subordinate; and *leges sub graviore lege*; and that, thus admitted, restrained, altered, new modelled, and amended, they are by no means with us a distinct independent species of laws, but are inferior branches of the customary or unwritten laws of England, properly called the 'king's ecclesiastical, the king's military, the king's maritime, or the king's academical laws.'

OF STATUTE LAW.—The *leges scriptæ*, or written laws of the kingdom, are the statutes, acts, or edicts, made by the king's majesty, by and with the advice of the lords spiritual and temporal, and commons, in parliament assembled. The oldest of these now extant, and printed in our statute books, is the famous Magna Charta, as confirmed in parliament, though doubtless there were many acts before that time, the records of which are now lost, and the determinations of them perhaps at present currently received for the maxims of the old common law.

The method of citing acts of parliament is various. Many of the ancient statutes are called after the name of the place where the parliament was held that made them; as the statutes of Merton and Marleberge, of Westminster, Gloucester, and Winchester. Others are denominated entirely from their subject; as the statutes of Wales and Ireland, the *articuli cleri* and the *prerogativa regis*. Some are distinguished by their initial words, a method of citing very ancient; being used by the Jews, in denominating the books of the Pentateuch; by the Christian church, in distinguishing their hymns and divine offices; by the Romanists, in describing their papal bulls; and, in short, by the whole body of ancient civilians and canonists, among whom this method of citation generally prevailed, not only with regard to chapters, but inferior sections also: in imitation of all which we still call some of the old statutes by their initial words, as the statute of *Quia emptores*, and that of *Circumspecte agatis*. But the most usual method of citing them, especially since the time of Edward II. is by naming the year of the king's reign in which the statute was made, together with the chapter or particular act, according to its numeral order; as, 9 G. 2. c. 4. For all the acts of one session of parliament taken together make properly but one statute; and therefore, when two sessions have been held in one year, we usually mention stat. 1 or 2. Thus the bill of rights is cited, as 1 W. and M. stat. 2. c. 2. signifying that it is the second chapter or act of the second statute, or the laws made in the second sessions of parliament held in the first year of King William and Queen Mary.



We shall here only take notice of the different kinds of statutes; and of some general rules with regard to the construction.

First, As to their several kinds. Statutes are either general or special, public or private. A general or public act is an universal rule that regards the whole community; and of this the courts of law are bound to take notice judicially and *ex officio*, without the statute being particularly pleaded, or formerly set forth, by the party who claims an advantage under it. Special or private acts are rather exceptions than rules, being those which only operate upon particular persons and private concerns; such as the Romans entitled *senatus decreta*, in contradistinction to the *senatus consulta*, which regarded the whole community; and of these the judges are not bound to take notice, unless they be formerly shown and pleaded. To show the distinction, 13 *Eliz.* c. 10. to prevent spiritual persons from making leases for longer terms than twenty-one years or three lives, is a public act, it being a rule prescribed to the whole body of spiritual persons in the nation; but an act to enable the Bishop of Chester to make a lease to A. B. for sixty years, is an exception to this rule; it concerns only the parties and the bishop's successors, and is therefore a private act.

Statutes also are either declaratory of the common law, or remedial of some defects therein. Declaratory, where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case the parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been. Thus, the statute of treasons, 25 *Ed.* 3. c. 2. doth not make any new species of treason; but only, for the benefit of the subject, declares and enumerates those several kinds of offence which before were treason at the common law. Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause whatsoever. And this, being done either by enlarging the common law where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, hath occasioned another subordinate division of remedial acts of parliament into enlarging and restraining statutes. To instance again in the case of treason. Clipping the current coin of the kingdom was an offence not sufficiently guarded against by the common law: therefore it was thought expedient by statute 5 *Eliz.* c. 11. to make it high treason, which it was not at the common law; so that this was an enlarging statute. At common law, also, spiritual corporations might lease out their estates for any term of years, till prevented by the statute 13 *Eliz.* before mentioned: this was therefore a restraining statute.

Secondly, The rules to be observed with regard to the construction of statutes are principally these which follow.

1. There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy: that is, how the common law stood at the making of the act; what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act, as to suppress the mischief and advance the remedy. Let us instance again in the same restraining statute of 13 *Eliz.* c. 10. By the common law, ecclesiastical corporations might let as long leases as they thought proper; the mischief was, that they let long and unreasonable leases, to the impoverishment of their successors; the remedy applied by the statute was by making void all leases by ecclesiastical bodies for longer terms than three lives, or twenty-one years. Now in the construction of this statute it is held, that leases, though for a longer term, if made by a bishop, are not void during the bishop's continuance in his see; or, if made by a dean and chapter, they are not void during the continuance of the dean; for the act was made for the benefit and protection of the successor. The mischief is therefore sufficiently suppressed by vacating them after the determination of the interest of the granters; but the leases, during the continuance, being not within the mischief, are not within the remedy.

2. To make a penal law reasonable and just, two conditions are necessary, and two proper. It is necessary, that the law should be adequate to its end; that, if it be observed, it shall prevent the evil against which it is directed. It is, secondly, necessary that the end of the law be of such importance as to deserve the security of a penal sanction. The other conditions of a penal law, which, though not absolutely necessary, are to a very high degree proper, are, that to the penal violation of the law there are many temptations, and that of the physical observance there is great facility; for, if temptations were rare, a penal law might be deemed unnecessary; and, on the other hand, if the duty enjoined by the law were of difficult performance, omission, though it could not be justified, might admit of considerable excuse.

3. A statute, which treats of things or persons of an inferior rank, cannot, by any general words, be extended to those of a superior. So a statute, treating of "deans, prebendaries, parsons, vicars, and others having spiritual promotion," is held not to extend to bishops, though they have spiritual promotion; deans being the highest persons named, and bishops being of a still higher order.

4. Penal statutes must be construed strictly. Thus, the statute 1 *Edw.* 6. c. 12. having enacted that those who are convicted of stealing horses should not have the benefit of clergy, the judges conceived that this did not extend to him who should steal but *one horse*, and therefore procured a new act for that purpose in the following year. And, to come nearer to our own times, by the statute 14 *Geo.* 2. c. 6. stealing sheep, *or other cattle*, was made felony without benefit of clergy. But these general words, "*or other cattle*," being



looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next sessions, it was found necessary to make another statute, 15 *Geo. 2. c. 34.* extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs, by name.

5. Statutes against frauds are to be liberally and beneficially expounded. This may seem a contradiction to the last rule; most statutes against frauds being in their consequences penal. But this difference is here to be taken; where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly; but, when the statute acts upon the offence, by setting aside the fraudulent transaction, here it is to be construed liberally. Upon this footing the statute of 13 *Eliz. c. 5.* which voids all gifts of goods, &c. made to defraud creditors and others, was held to extend, by the general words, to a gift made to defraud the queen of a forfeiture.

6. One part of a statute must be so construed by another, that the whole may, if possible, stand; *ut res magis valeat quam pereat.* As if land be vested in the king and his heirs by acts of parliament, saving the right of A; and A has at that time a lease of it for three years; here A shall hold it for his term of three years, and afterwards it shall go to the king. For this interpretation furnishes matter for every clause of the statute to work and operate upon. But,

7. A saving, totally repugnant to the body of the act, is void. If therefore an act of parliament vests land in the king and his heirs, saving the right of all persons whatsoever; or vests the land of A in the king, saving the right of A; in either of these cases the saving is totally repugnant to the statute, and, if good, would render the statute of no effect or operation; and therefore the saving is void, and the land vests absolutely in the king.

8. Where the common law and a statute differ, the common law gives place to the statute; and an old statute gives place to a new one. And this upon the general principle laid down in the last section, that *leges posteriores priores contrarias abrogant.* But this is to be understood only when the latter statute is couched in negative terms, or by its matter necessarily implies a negative. As, if a former act says, that a juror upon such a trial shall have 20*l.* a-year, and a new statute comes and says he shall have twenty marks; here the latter statute, though it does not express, yet necessarily implies, a negative, and virtually repeals the former. For, if twenty marks be made qualification sufficient, the former statute which requires 20*l.* is at an end. But, if both the acts be merely affirmative, and the substance such that both may stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy. If by a former law an offence be indictable at the quarter sessions, and a latter law makes the same offence indictable at the assizes, here the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction, and the offender may be prosecuted at either; unless the new statute subjoins express negative

words; as, that the offence shall be indictable at the assizes, and not elsewhere.

9. If a statute that repeals another, is itself repealed afterwards, the first statute is hereby revived, without any formal words for that purpose. So, when the statutes of 26 and 35 *Hen. 8.* declaring the king to be the supreme head of the church, were repealed by statute 1 and 2 *Philip and Mary*, and this latter statute was afterwards repealed by an act of 1 *Eliz.* there needed not any express words of revival in Queen Elizabeth's statute, but these acts of King Henry were impliedly and virtually revived.

10. Acts of parliament derogatory from the power of subsequent parliaments bind not. So the statute 11 *Hen. 7. c. 1.* which directs, that no person for assisting a king *de facto* shall be attainted of treason by act of parliament or otherwise is held to be good only as to common prosecutions for high treason; but will not restrain or clog any parliamentary attainder. Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority, it acknowledges no superior upon earth, which the prior legislature must have been if its ordinances could bind the present parliament. And upon the same principle Cicero, in his letters to Atticus, treats with a proper contempt these restraining clauses, which endeavour to tie up the hand of succeeding legislatures: "When you repeal the law itself (says he), you at the same time repeal the prohibitory clause which guards against such repeal."

Lastly, acts of parliament that are impossible to be performed are of no validity; and, if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. We lay down the rule with these restrictions; though we know it is generally laid down more largely, that acts of parliament contrary to reason are void. But, if the parliament will positively enact a thing to be done which is unreasonable, we know of no power that can control it; and the examples usually alledged in support of this sense of the rule do none of them prove, that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But, where some collateral matter arises out of the general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it. Thus, if an act of parliament gives a man power to try all causes that arise within his manor of Dale; yet, if a cause should arise in which he himself is party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel. But, if we could conceive it possible for the parliament to enact, that he should try as well his own causes as those of other persons, there is no court that has power to defeat the intent of the legislature, when couched in



such evident and express words as leave no doubt whether it was the intent of the legislature or not.

These are the several grounds of the laws of England; over and above which, equity is also frequently called in to assist, to moderate, and to explain them. What equity is, and how impossible in its very essence to be reduced to stated rules, hath been shown above. It may be sufficient, therefore, to add in this place, that, besides the liberality of sentiment with which our common law judges interpret acts of parliament, and such rules of the unwritten law as are not of a positive kind, there are also courts of equity established for the benefit of the subject to detect latent frauds and concealments, which the process of the courts of law is not adapted to reach; to enforce the execution of such matters of trust and confidence as are binding in conscience, though not cognizable in a court of law; to deliver from such dangers as are owing to misfortune or oversight; and to give a more specific relief, and more adapted to the circumstance of the case, than can always be obtained by the generality of the rules of the positive or common law. This is the business of the courts of equity, which however are only conservant in matters of property; for the freedom of our constitution will not permit, that in criminal cases a power should be lodged in any judge to construe the law otherwise than according to the letter. This caution, while it admirably protects the public liberty, can never bear hard upon individuals. A man cannot suffer more punishment than the law assigns, but he may suffer less. The laws cannot be strained by partiality to inflict a penalty beyond what the letter will warrant; but, in cases where the letter induces any apparent hardship, the crown has the power to pardon.

THE  
CYCLOPÆDIA OF LAW;

OR THE  
CORRECT BRITISH LAWYER.

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**ABATEMENT** by the Death of Parties was a curious learning as it stood at common law in such cases where there were more plaintiffs and defendants than one; for the rule laid down by Lord Chief Baron *Gilbert*, in his history of *C. B.* 195, though founded in reason, does not seem to be warranted entirely by the cases; the rule laid down by him is, that wherever the death of a party happens pending the writ, and yet the plea is in the same condition as if such party were living, there such death makes no alteration. However, now by 8 & 9 *W.* 3. 11, if there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of action survive, the action shall not be thereby abated, but such death being suggested on the record, shall proceed, &c.

By the same act, if any plaintiff happen to die after an interlocutory judgment, the action shall not abate, if it might originally be maintained by the executors of such plaintiff, and if the defendant die after such interlocutory judgment, the action shall not abate, if it might originally be maintained against the executors of such defendant; and the plaintiff or his executors may have a *sci. fa.* against the defendant or his executors, to shew cause why damages should not be assessed, &c.

By the 17 *Car.* 2. c. 8. it is enacted, That in all actions personal, real, or mixed, the death of either party between the verdict and judgment shall not be alleged for error, so as such judgment be entered within two terms after such verdict.

The death of either party before the assizes is not remedied by this statute, but if the party die after the assizes begin, though the trial be after his death, that is, within the remedy of the statute, for the assizes is but one day in law. Yet the court said it was in their discretion, whether they would arrest the judgment; but in Lord *Raymond* 1415, it was holden not assignable for error, it appearing by the record that the defendant appeared *per attornatum suum*.

The plaintiff has a right to proceed both for the possession and the trespass, and therefore the death of the lessor (though only tenant for life) is no abatement; but if the plaintiff in such case insist to go on, the court will oblige him to give security for payment of the costs in case judgment go against him.



If on the trial the defendant will not appear, and confess lease, entry and ouster, the course is to call the defendant to confess, &c. and then to call the plaintiff and nonsuit him, and pray to have it indorsed on the *postea* that the nonsuit was for want of confessing, &c. and then upon the return of the *postea* judgment will be given against the casual ejector.

If two men lease for years, and covenant that the lease shall enjoy free from incumbrances made by them, this shall be taken to be served as well as joint.

Note; If the covenant be joint, and the action brought only against one, advantage must be taken by pleading it in abatement. But where it is brought by one covenantee where there are several, advantage may be taken of it without pleading it in abatement by cravingoyer, and demurring generally; Note, Tenants in common ought to join in the action of covenant for rent.

ABEYANCE, is that which is in expectation, remembrance, and intendment of law. By a principal of law, in every land there is a fee simple in somebody, or it is in *abeyance*; that is, though at present it be in no man, yet it is in expectancy, belonging to him that is next to enjoy the land. Thus where no person is seen or known, in whom the *inheritance* can rest, it may be in *abeyance*, as in a limitation to several persons, and the survivor, and the heirs of such survivor, because it is uncertain who will be the survivor; yet the freehold cannot, because there must be a tenant to the *præcipe* always. So, if a man be a patron of a church, and present a clerk to the same, 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, the fee is then in *abeyance*, until there be a new parson presented, admitted, and inducted. For 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.

ABDUCTION of a wife. Taking a wife from her husband, is commonly called in the law abduction. This may be done with the consent of the wife, or forcibly and violently. But by whatever means it is brought about, the law always supposes compulsion and force to have used, because the wife is not supposed to possess a power of consent. The remedy therefore for such a crime is, by writ of ravishment, or action of trespass, *vi et armis, de uxore rapta et abducta*. This action lays at the common law, and therefore the husband shall recover, not the possession of his wife, but damages for taking her away, and the offender is liable to be imprisoned two years, and to be fined at the pleasure of the king. Both the king and the husband may therefore have this action. And the husband is likewise entitled to recover damages on an action on the case, against such as persuade and entice the wife to live separately from him, without any sufficient cause. The old law was so strict in this point, that if a man's wife missed her way upon the road, it was not lawful for another man to take her into his house, unless she was benighted, or in danger of being lost or

drowned. But a stranger might carry her behind him on horseback, to market, to a justice of the peace, for a warrant against her husband; or to the spiritual court to sue for a divorce.

A man may lawfully own and retake his wife or child wherever he finds them; but this act of recaption must not be done riotously, or in a manner which occasions a breach of peace. And unless such a power was granted to an husband or parent to do himself justice by his own mere act, without the intervention of the law, his wife or children might be concealed and carried out of his reach if he had no speedier remedy than the ordinary process of law.

None shall take by force any maiden within age, (that is, the age of twelve, which is the age of consent to marriage, 2 Inst. 182) neither by her consent, nor without it, nor any wife or maiden of full age; nor any other woman against her will, on pain of imprisonment for two years, and after fine, at the king's will.

What is commonly called stealing an heiress, is more technically styled by the law, forcible abduction and marriage. The law respecting this offence runs thus; "if any person shall for lucre take any woman, maid, wife, or widow, having substance either in goods, or lands; or being heir apparent to her ancestors, contrary to her will, and afterwards she be married to such misdoer, or, by his consent, to others, or defiled; such person, and all his accessaries, shall be deemed principal felons, and not be entitled to the benefit of clergy;" but accessaries after the fact are allowed benefit of clergy.

To prove a man guilty of stealing an heiress, the indictment must set forth that the taking was for lucre. In proof of which must be shewn, that a woman so taken away has substance, either real or personal; or is an heir apparent. She must be likewise proved to have been taken away against her will and lastly, it must be proved that she was afterwards married or defiled, either to such misdoer, or by his consent to others. Such person, and all his accessaries, are deemed principal felons, and they are not entitled to the benefit of clergy; accessaries after the fact only expected. And though possibly the marriage or defilement after her forcibly taking away, may be by her consent, she being wrought upon to give it by persuasion and management; yet such subsequent consent does not abate the felony, if the first taking away was against her will: and so *vice versa*, if the woman be originally taken away with her own consent, yet if she afterwards refuse to continue with the offender, and is forced against her will, she may from that time be said to be taken against her will, as properly as if she had never given any consent at all. For till the force was put upon her she was in her own power. It is held that a woman thus taken away and married, may be sworn and give evidence against the offender, though he is her husband *de facto*: contrary to the general rule of law, because he is no husband *de jure*, in case the actual marriage was against her will. In cases indeed where the actual marriage is good by the consent of the



inveigled woman obtained after her forcible seduction, Sir Matt. Hale seems to question how far her evidence should be allowed ; but other authorities seem to agree, that it should even then be admitted ; esteeming it absurd, that the offender should thus take advantage of his own wrong, and that the very act of marriage, which is a principal ingredient in his crime, should, by a forced construction of law, be made use of to stop the mouth of the most material witness against him.

An inferior degree of the same kind of offence, but not attended with force, is the unlawfully conveying or taking away any woman child unmarried, (which is held to extend to illegitimate children) under the age of sixteen years, without the will of her father, mother, guardians, or governors, and out of their possession. Such shall be imprisoned two years, and fined at the discretion of the court. And if he deflowers such maid, or woman child ; or without the consent of parents, or others invested with legal authority contracts a matrimony with her, he shall be imprisoned five years, or fined at the discretion of the court. And she herself shall forfeit all her lands to her next of kin, during the life of such husband, if the age of twelve years. By which latter clause the mercenary views which generally instigated to such stolen marriages are effectually baffled.

It is a matter of doubt, whether the taking away a child from its father is considered by the common law as a civil injury. Indeed before the abolition of the teure in chivalry, it was equally a doubt whether an action would lie for taking and carrying away any other child besides the heir. The loss or value of the heir's marriage was made the only ground or cause of action. But this point was not universally assented to : others holding, that an action would lie for the taking away any of the children, as the parent had an interest in them all, to provide for their education. The learned commentator on the laws of England is of opinion, that before the abolition of the fœdal tenures, it was an injury to the father to take away any one of his children equally with the heir ; and therefore supposes that it still remains an injury at common law, and is remediable by a writ of ravishment, or action of trespass *vi et armis de filio (vel filia) raptò vel abducto*. In the same manner as the husband may have it on account of the abduction of his wife. And the act 4 & 5 Phil. & Mary, c. 8. subjects any one above the age of fourteen years, to two years imprisonment, or a fine at the discretion of the court, who shall take away any maid, or woman child, under the age of sixteen years from the custody, and against the will of her father, or such as have a right of guardianship over her.

ABJURATION is the act of denying or renouncing a thing with an oath ; but it is generally understood in our law for an oath taken by a person guilty of felony, who flying to a place of sanctuary, would swear to forsake the realm for ever in lieu, of other punishment, choosing rather *perdere patriam quam vitam*

By the stat. 21 *Jac. c. 28.* all statutes relating to abjuration made before 35 *Eliz.* were repealed, and the privilege of sanctuary entirely abolished.

The penalties relating to abjuration by Stat. 35 *Eliz.* are taken away by stat. 1 *W. & M. c. 1. sess. 1.* upon taking the new oaths and subscribing the declaration therein mentioned.

Two justices may convene any person that is suspected to be dangerous or disaffected to the government; and may tender the oath of abjuration, which, if refused, upon the justice's certificate to the next quarter sessions, if the person does not take the oath the next term or next sessions after such certificate, he has become a popish recusant convict.

In all cases where the abjuration oath may be tendered by law, or required of Quakers upon their solemn affirmation, they are to take it in the form directed by 1 *Geo. 1. c. 6. s. 3.*

A feme covert shall not be obliged to abjure, but every other offender who abjures, or being required refuses, forfeits all his goods and lands during life.

ACCEPTANCE 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. If baron and feme, seised of lands in right of feme, join and make a lease of feoffment, reserving rent, and the baron die, after whose death the feme receive, or *accept* the rent; by this the lease or feoffment is confirmed, and it shall bar her.

So if *tenant in dower* lease for years, and die, and the heir accept the rent; but, if a parson make a lease for years not warranted by the statute, acceptance of rent by a new parson, will not make it good.

And if a *tenant for life*, make a lease for years, there no acceptance will make the lease good, because it is void by his death.

But if a tenant in tail make a lease for years, rendering rent, and die, and the *issue* accept the rent, it shall bind him. Should such tenant in tail make a lease for years to commence after his death, rendering rent; in such case, *acceptance* of rent by the *issue*, will not make the lease good to bar him, because the lease did not take effect in the life of his ancestors.

If a lease be made on condition that the lessee do not *waste*, and he commit waste, and afterwards the lessor accept the rent, he cannot enter for the condition broken.

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



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

What shall be considered as an absolute or conditional acceptance, is a question of law to be determined by the court, and is not to be left to a jury.

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

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

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

When a conditional acceptance is made in writing, the party giving it should also express the condition, otherwise he will not be able to avail himself of such condition, against any other party. Acceptance by the custom of merchants as effectually binds the acceptor, as if he had been the original drawer; and, having once accepted it, he cannot afterwards revoke it.

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

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

It has been held, that the bill should be left with the drawee twenty-four hours, that he may look into his account, and determine whether he will accept or not; but a bill or note, need not be left on a presentment for payment. Forging the acceptance of any bill of exchange, or the number or principal sum of any accountable receipt is made *felony without benefit of clergy*.

ACCESSARY is a term used to signify a person guilty of a felonious offence; not principally, but by a participation; as by advice, command or concealment. There are two kinds of accessaries.

1. Before the fact. 2. After the fact.

1. *Before the fact.* The first, is he who commands or procures another to commit felony, and is not present at the doing thereof himself.

It is a maxim in law, that in the highest and lowest offences there are no accessaries, but all are principals, as in high treason, riots, routs, forcible entries, and other trespasses *vi & armis*.

If any offence be made felony by statute, it may have accessaries both before and after the fact committed, though the accessaries be not mentioned in the statute.

If *A.* command *B.* to lay hold upon *C.* and *B.* goes and robs *C.* this is no felony in *A.* (if he be absent at the time of the robbery done) for this command might have been done without any robbery; but if the command had been to beat *C.* and *B.* kills him, *A.* is accessory.

If a command be given to rob *J. S.* and the party commanded attempting to rob him kill him, he that commanded the robbery is accessory to the murder.

Acquittal of one accessory discharges all the rest.

If *A.* counsel *B.* to kill *C.* by poison, and he kills him with his sword, &c. or to kill *C.* by the highway, and he kills him in his house; or to kill him one day, and he kills him another: In all these cases *A.* shall be accessory to the murder.

If *J. S.* counselleth a woman to murder the child in her body (when it shall be born) and after, when born, the midwife, or other person in presence of the mother, and by her command killeth the child, *J. S.* is accessory, though done in his absence.

*N. B.* That in manslaughter, there can be no accessory before the fact; for manslaughter is always upon a sudden affray: accessaries in petty treason, wilful murder or robbery, or to the felonious burning of a dwelling-house, or barn with corn, or horse-stealing, shall not have the benefit of clergy.

If adulterer counsels the woman to murder the infant when born, he is accessory.



2. *After the fact.* Accessaries after the offence are they, who knowing that another hath committed a felony, do feloniously or voluntarily receive, harbour, or relieve him, &c. whether it be before attainder or after.

But it must be *actual* knowledge of the felony, and not *presumptive* only, or according to *Bracton*, right and direct knowledge in the parties to make the accessory.

To lend a felon a horse to go his way, or otherwise make his escape, makes the lender an accessory. But to relieve a felon in prison, or to aid him by good words, or sue for his deliverance, or send a letter for his enlargement; this maketh not a man an accessory to the felon. No more doth it to relieve, &c. a person going under bail, and bound to appear for his trial.

Where the principal is acquitted of murder, and found guilty of manslaughter, the accessaries after the fact shall answer as accessaries to manslaughter.

If upon hue and cry, any person arrest the thief, and take the goods from letting him go, he is an accessory.

In case of an accessory after the fact, it is requisite that it be felony at the time he becomes accessory to it. For if *A* wound *B*. mortally, and *C* knowing thereof, receive, &c. & then let him go before *B*. dies, he is no accessory.

At common law no man could be accessory, &c. to a felony in another county; but this is altered by stat. 2. *Ed.* 6. c. 24.

A man may be accessory to an accessory, if he receive him, &c. knowing thereof.

If the owner hath complained to a justice of peace, or to a constable; or if the felon be taken upon the hue and cry, or otherwise, and then the owner takes his goods, or compounds with the felon, or consents to his escape; this makes him an accessory after the fact, because he did not act against the offender *criminaliter*. But if in pursuit he re-taketh his goods, and suffereth the felon to escape before any complaint made to the justice, or without being charged, &c. this is a misdemeanor, for which he may be fined; but it doth not make him an accessory; because *in initio* he has liberty *agere civiliter vel eriminaliter*.

But notwithstanding acquittal, he may be indicted as accessory after the fact, because such an accessory cannot be guilty of committing the fact itself, for that was done before he knew any thing of it.

If any person shall receive or buy knowingly any stolen goods, or knowingly harbour or conceal felons, he shall be taken as accessory to the felony, and being convicted shall suffer death as a felon.

Where a woman is taken away against her will, within the meaning of the statute, though the receivers of the woman are principals; yet the receivers of those who took the woman are but accessaries. And those accessaries shall have benefit of clergy, because it is after the fact; for that statute of 33 *Eliz.* c. 9. takes away the benefit of clergy from principals, aiders and abettors before the fact only.

Those who receive a man bailed for felony, or relieve a felon in prison, or to send letters or messengers in his favour, to teach him to read, or to advise him that he endeavour to persuade the witness not to appear against him at his trial.

But a servant is so by relieving his master, being a felon, or by assisting him to escape; for he is bound to accuse him, and may depart his service; and in like manner the master is accessory by relieving his servant.

So a husband receiving his wife knowing her to have done a felony *sed non è converso*; for a feme covert cannot be accessory to her own husband, but she may to another.

*General Observations.* He that commandeth or counselleth any unlawful act to be done, shall be adjudged accessory to all that shall ensue upon the same evil act; but not to any other distinct thing. *A.* commandeth *B.* to steal a horse, and he steals an ox, or to rob a man on the highway of his money, and he robs him in his house of his plate; or to burn the house of *B.* and he burneth the house of *C.* these are other acts and felonies than *A.* commanded to be done; and therefore *A.* shall not be adjudged accessory to them.

*A.* counselleth *B.* to poison *C.* and to that end *A.* buyeth poison and delivereth it to *B.* who tempereth it in an apple, and delivereth to *C.* with intent to poison him, and *C.* knowing nothing, giveth the apple to *E.* who eateth it and dieth thereof: Here *A.* is not accessory to the murder of *E.* yet it is murder in *B.*

If *A.* counsels and commands *B.* to kill *J. S.* and afterwards countermands it, yet *B.* kills *J. S.* in this case *A.* shall not be adjudged accessory.

If the principal be attainted of murder, and then dies, and the justices before whom the accessory is tried, have the record of the attainder before them, they may proceed against the accessory, else not.

A servant may be accessory either to his master or mistress, both before and after the fact.

If a man be the cause of the escape of a felon, though he be his own brother, he thereby becomes accessory. But if one, whom I know to be a felon, escape out of my house, without my furtherance, I am no accessory.

The principal ought first to be attainted, because if he be acquitted he can have no accessory.

If the principal be attainted erroneously, the accessory notwithstanding shall be put to answer.

If the principal die, be found not guilty, or that he slew the other in his own defence, the accessory shall be discharged.

By the common law there could be no accessory in one county to a felony done in another, because those of a strange county could not upon the trial have any cognizance of the principal offence; but this is now remedied by the statute 2 & 3 *Ed. 6. c. 24.* (i. e.) That if a felony is done in one county, and there are accessories in another, they may be indicted as accessories.



Where it is found that the principal killed another, *Se defendendo*, or by mis-adventure, the accessory shall be discharged.

If the principal be burned in the hand, the accessory must be discharged; for the accessory ought not to be condemned, but where the principal is attainted.

A man may be accessory to the stealing of his own goods, as if confederate with another to steal goods from his bailiff, to the intent to charge his bailiff: this is felony.

In all felonies, which are made so by statutes, and which were not so at common law, there are accessories both before and after the fact; the abettors, aiders, concealors and receivers are not named in the statute, excepting only in felony for carrying away a woman against her will, upon the statute 3 *H.* 7. in which case all are principals.

Three indicted on the statute of stabbing, and found guilty, and he that did it executed, the other two adjudged accessories.

If twenty men go in aid of the sheriff, or any other lawful act, if one of them kill another, the rest are not accessories; otherwise, if the twenty go about an unlawful act.

The law was defective in this case, (*viz.*) That no accessory should be convicted or suffer punishment where the principal was not attainted, or had his clergy; and by this means the contrivers of felonies and the receivers of stolen goods often were unpunished; therefore a late act was made, that if principal be convict of felony, stand mute or challenge peremptorily above twenty jurors, the accessory may be proceeded against as if such principal felon has been attainted, notwithstanding such principal be admitted to his clergy, pardoned, or otherwise delivered before attainder: and such accessory if he be convict, if he stands mute or challenges as aforesaid, shall suffer as if principal had been attainted.

Buyers and receivers of stolen goods knowingly, may be presented to a misdemeanor before the principal be convict; which shall exempt them from being punished as accessory, when the principal is convicted.

The principal must always be named in the indictment against an accessory, and ought to be first convicted, otherwise the accessory cannot be tried; for by the acquittal of the one, the other is discharged.

If the principal doth not appear the accessory shall not be tried; if he is not attainted, the accessory shall not be outlawed; if a man is indicted as accessory to two principals, one of which happens to be convicted, and the other doth not appear, yet the accessory shall be tried, and may be condemned if found accessory to the party convicted, and may again be arraigned as accessory to the other when he appeareth.

If both principal and accessory plead to the same felony, they may be tried by the same jury; but judgment must first be had against the principal, and the jury must be charged to acquit the accessory, if they find the principal not guilty.

The accessory shall not take advantage of any error in the attainder of the principal.

The principal in murder is not bailable, but the accessories are, (i. e.) the justices of the peace cannot bail, but the judges of oyer and terminer may.

In an indictment against an accessory, you must set forth the manner of the felony, and that the defendant knowing him to have done such a felony.

If a criminal is indicted as principal and acquitted, he cannot afterwards be indicted as accessory before that fact, because he who advises the thing to be done is in a manner guilty of the fact itself; and being acquitted of that, he is discharged of all guilt before the principal fact committed.

*Chomley*, recorder of *Lincoln*, was turned out for trying the accessory first.

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

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

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

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

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

Where the common law and a statute differ, the common law gives place to the statute; and an old statute, gives place to a new one. By the 33 Geo. 3. c. 13. every act of parliament, in which the commencement thereof is not directed to be from a free specified time, and which shall pass after the 8th of April, 1793, immediately after the title thereof, shall be endorsed by the clerk of parliament, with the day, month, and year, when the same passed and received the royal assent; which endorsement shall be



taken to be the date of its commencement, where no other commencement shall be therein provided.—By the 41 Geo. 3. sess. 2. c. 90. s. 9. the statutes of England and Great Britain printed by the king's printer, shall be conclusive evidence in Ireland: and Irish statutes passed before the union, and in like manner printed there by the king's printer, shall be evidence in Great Britain. By 48 Geo. 3 c. 106. when bills for continuing expiring acts shall not pass before such acts expire, such continuing acts shall take effect from the date of the expiration of the act intended to be continued.

**ACTIONS.** It was for their mutual conveniency and defence that men first entered into society, thereby submitting themselves to be governed by certain laws, that they might in return enjoy the benefit and protection of them.

Hence the end of the law is to preserve men's persons and properties from the violence and injustice of others; and for that purpose it does, in all instances of an injury being committed, either inflict a punishment upon the party offending or give a recompence to the party injured.

The injuries on account of which an action may be brought are such as either affect the person, or the property of the party.

Those which affect the person are, 1. Slander. 2. Malicious Prosecution. 3. Assault and Battery. 4. False Imprisonment. 5. Injuries arising from Negligence or Folly. 6. Adultery.

1. Such as affect his personal property. 2. Such as affect his real property.

The actions that may be brought for injuries affecting his personal property, are, 1. Deceit. 2. Trover. 3. Detinue. 4. Replevin. 5. Rescous. 6. Trespass. 7. Case for Misbehaviour in an Office, Trust or Duty. 8. Case for consequential Damages.

The actions, which may be brought for injuries affecting a man's real property are of three sorts, 1. Such in which damages alone are to be recovered. 2. Such by which a term for years may be recovered. 3. Such by which a freehold may be recovered.

The actions in which damages alone are to be recovered are two: 1. Trespass. 2. Case; of which enough has been already said in the last chapter of the last book.

The only action by which a term for years may be recovered is ejection.

The actions by which a freehold may be recovered, are, 1: A Writ of Right. 2. Formedon. 3. Dower. 4. Waste. 5. Assize. 6. Quare impedit.

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

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

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

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

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

*Actions popular*, are those given on breach of some penal statute; which every man has a right to sue for himself and the king by action, *information, &c.* This kind of action is called *popular*; because it is given to any one in general who will prosecute.

**ACTIONS OF ACCOUNT.** The action of account is of late years but rarely used, therefore very little will be said upon it. At common law it lay only against a guardian in socage, bailiff or receiver, and in favour of trade between merchants. The 13 *Ed. 3. c. 23.* gave it to the executors of a merchant; the 25 *Ed. 3. c. 5.* to the executors of executors, and 31 *Ed. 3. c. 11.* to administrators. And now by the 3 & 4 *Ann. c. 16.* it may be brought against the executors and administrators of every guardian, bailiff and receiver, and by one joint tenant, tenant in common, his executors and administrators against the other, as bailiff for receiving more than his share, and against their executors and administrators.

If the plaintiff in his declaration say not by whose hands, if the defendant demur specially he will have judgment; for if it were by the hands of the plaintiff, the defendant may wage his law, *aliter* if it were by another's hands.—It seems this must be understood of cases where the defendant is charged as receiver only; for if he be charged as bailiff, it is not necessary to shew by whose hands.

In account against one as receiver by the hands of *A.* a receipt by his hands ought to be proved. But if he prove that *A.* directed the defendant to borrow of another to pay the plaintiff, and that the defendant borrowed the money accordingly, that is sufficient.

If the defendant plead *ne unques receiver*, he cannot give a release in evidence, neither can he give in evidence bailment to deliver to *B.* and that he has delivered accordingly: for though this special matter prove he is not accountable, yet as upon the delivery he was accountable conditionally, (*viz.* if he did not deliver over) it does not prove the plea; but if the defendant plead he accounted before *R.* and *W.* evidence that he accounted before *R.* only is sufficient, because the account is the substance.

In the action of account there are two judgments; the first is *quod computet*, after which the court assigns auditors, before whom nothing shall be allowed as a good discharge, which might have been pleaded to the action.

If the defendant plead any matter in discharge before the auditors, which is denied by the plaintiff, so that the parties are at is-



sue, the auditors must certify the record to the court, who will thereupon award a *fi fa.* to try it; and if such trial the plaintiff make default, he shall be nonsuited, but after that he may bring a *sci. fa.* upon the first judgment.

Note; The defendant cannot in this action pay money into court, as he may in *assumpsit*.

ADDITION. The place of Abode and Dignity of the Person impleaded are necessary to set forth in judicial Proceedings, lest an innocent Person, by having the same name with the real Defendant, should suffer. Therefore 1 *Hen. 5.* enacts, that in all Personal Actions, Appeals and Indictments, there shall be added to the Name of the Defendants their Estates, Degrees, Mystery and Place of Abode.

If one of the Degree of a Duke have several other Titles, as Marquis, Earl, Viscount and Baron, he shall have the addition of the most worthy Dignity, *viz.* of a Duke.

Where a father hath the same name, and the same addition with a defendant, being his son, the action is abatable, unless it add the addition of *the younger*, to the other additions. But where the father is the defendant, there is no need of the addition of *the elder*.

ADMINISTRATOR. In ancient times if a person made no disposition of his property so far as he had a right of bequeathing it, the king was entitled to seize upon his goods, as the *parens patrii*, and general trustee of the kingdom. This prerogative the king continued to exercise for some time by his own ministers, of justice; and probably in the county court, where matters of all kinds were determined. And there are several instances in Madox's history of the Exchequer, where the king issued a mandate to his officers to attach the goods of divers persons who died intestate. And the same prerogative was granted from the crown as a franchise to many lords of manors, and others, who have at this day a prescriptive right to grant administration to their intestate tenants and suitors, in their own courts baron, and other courts, or to have their wills there proved, in case they made any disposition. Afterwards the crown in favour of the church, invested the prelates with this branch of the prerogative, which was done, said Perkins, because it was intended by the law, that spiritual men are of better conscience than laymen; and that they had more knowledge what would conduce to the benefit of the soul of the deceased. The goods therefore of intestates were given to the ordinary by the crown; and he might seize them, and keep them without wasting, and also might give, alien, or sell them at his will, and dispose of the money *in pious uses*. And if he applied it otherwise he abused the confidence the law reposed in him. So that properly the whole interest and power which were granted to the ordinary, were only those of being the king's almoner within his diocese; in trust to distribute the intestate's goods in charity to the poor, or in such superstitious uses as the mistaken zeal of the times had denominated *pious*. And as he had thus the disposition of intestate's effects, the probate of wills of course followed. For it was thought just and

natural that the will of the deceased should be proved to the satisfaction of the prelate, whose right of distributing his chattels for the good of his soul, was effectually superseded thereby. The goods of the intestate being thus vested in the ordinary upon the most solemn and conscientious trust, the reverend prelates were therefore not accountable to any, but to God and their own consciences for their conduct. But to what a length of iniquity the holy ecclesiastics carried the abuse of their trust most evidently appears from a gloss or comment of Pope Innocent IV. written about the year 1250, wherein he lays it down for established canon law, that "*in Britannia tertia pars bonorum decedentium ab intestato, in opus ecclesie et pauperum dispensanda est.*" Thus the Popish clergy took to themselves, under the name of the church and poor, the whole residue estate of the deceased, after the *partes rationabiles*, or two-thirds, vesting in the wife and children were deducted. And a greater share, if the deceased died without a wife, or without a child. And the whole of his effects if neither survived him, and these they appropriated without paying even his lawful debts, or other charges thereon. To redress a national evil of such enormity it was enacted, that the ordinary should be bound to pay the debts of the intestate, so far as his goods extended, in the same manner that executors were bound in cases where the deceased left a will. A use more truly pious than any requiem or mass for his soul. This was the first check given to that exorbitant power, which the law had entrusted with ordinaries. But though they were now made liable to the creditors of the intestate for their just and lawful demands, yet the residuum, after paying of debts, remained still in their hands, to be applied to whatever purposes the conscience of the ordinary should approve. The flagrant abuses of which power occasioned the legislature again to interpose, in order to prevent the ordinaries from keeping any longer the administration in their own hands, or those of their immediate dependants, and therefore the statute 31 Edw. III. c. 2. provides, that in case of intestacy the ordinary shall depute the nearest and most lawful friends of the deceased to administer his goods, which administrators are put upon the same footing with regard to suite, and to accounting as executors appointed by will, as has been already shewn. And this is the original of administrators, as they at present stand; who are only the officers of the ordinary appointed by him in pursuance of this statute, which singles out the next and most lawful friend of the intestate. By which is understood to be meant, the next of blood that is under no legal disability. The statute 21 Hen. VIII. c. 5. enlarges a little more the power of the ecclesiastical judge; and permits him to grant administration *either* to the widow, or the next of kin, or to both of them at his own discretion: and where two or more persons are in the same degree of kindred, it gives the ordinary his election to accept whichever he pleases. The person to whom administration is granted may refuse to take it upon him; and the ordinary has not power to compel him to accept it. If there are two or more administrators,



a sale or release of the effects of the deceased must be made to all jointly; for the act of one of them is not good against the rest, as in the case of executors.

Letters of administration are not usually issued until after the expiration of fourteen days after the death of the intestate. Unless for special cause, as, that the goods will otherwise perish, or the like, the judge shall see fit to decree them sooner. The ordinary cannot repeal an administration at his pleasure. But it may be repealed though not arbitrarily, where there is just cause for so doing, of which the temporal courts are to judge; as if the administrator should become lunatic, or the like. So if the next of kin at the time of the death of the intestate happen to be incapable of administering, by reason of attain, or excommunication, and the ordinary commit it to another; if he afterwards becomes capable, the ordinary may repeal the first administration, and commit it to the next of kin. An administration may be repealed without any sentence of revocation to be given in any spiritual court or otherwise; as, by granting a new administration.

Where administration is granted during the minority of divers executors, he that comes first of age shall prove the will, and the administration then ceases. So if a man appoints by his will two executors; one of the age of seventeen, and the other under; administration during the minority of him that is under age is void; because he that is of the age of seventeen may execute the will. And it is said, that the ordinary may grant administration during the minority of an infant, to whom he pleases. For the next of kin in respect to administration only concerns an intestate, and not the person who is employed for the infant until he comes of age. If a feme-covert, as next of kin, has a right to administer, the administration ought not to be granted to the husband and wife; for then if she should die before him, he would continue administrator against the meaning of the act. But it was said, that if it had been granted to them only during the coverture, perhaps it might have been good; because if granted to the wife only, the husband might, during the coverture, have administered. If the wife as a residuary legatee, hath a right to take administration, but refuses, and prays it may be granted to another, and not to her husband; yet it may be granted to her husband. If none of the kindred will take administration, then it shall be granted to those who shall desire it; and if none will take it, the ordinary may grant letters *ad colligendum bona defuncti*; and thereby take the goods of the deceased into his own hands, wherewith he is to pay debts and legacies, if a will or codicil is produced, so far as the goods will reach, for which himself becomes liable in law, as other executors or administrators. If administration is granted to two, and one dies, yet the administration does not cease; for it is not like a letter of attorney to two, where by the death of one the authority ceaseth, but is rather an office; and administrators are enabled to bring actions in their own names; they come in the place of executors, and therefore the office survives.

When an administrator hath judgment and dies, his executors (as such) may not sue execution of the same judgment, if for none shall have execution of this judgment, but he who shall be subject to the payment of the debts of the first intestate.

All persons are capable of being executors that are capable of making wills, and many others besides; as feme-coverts, and infants: nay even infants unborn, or *in ventre sa mere*, may be made executors. But no infant can act as such till the age of seventeen years; till which time administration must be granted to some other, *durante minore ætate*. In like manner as it may be granted *durante absentia*, or *pendente lite*, when the executor is out of the realm, or when a suit is commenced in the ecclesiastical court touching the validity of a will. This appointment of an executor is essential to the making of a will, and it may be performed either by express words, or such as strongly imply the same. But if the testator makes his will without naming any executor, or if he names incapable persons, or if the executors named refuse to act, in any of these cases, the ordinary must grant administration *cum testamento annexo* to some other person: and then the duty of an administrator, as also when he is constituted only *durante minore ætate* of another, is very little different from that of an executor. And this was law so early as the reign of Henry II. The duties of executors and administrators are in general nearly the same; but an executor may do many acts before he proves a will, and an administrator can do nothing till letters of administration are issued; because the former derives his power from the will of the deceased, the latter receives it entirely from the ordinary. If a stranger takes upon him to act as executor, without any just authority, (as by intermeddling with the goods of the deceased, and many other transactions) he is called in law an executor of his own wrong, *de son tort*, and is liable to all the trouble of an executorship, without any of the profits or advantages: but merely doing acts of necessity or humanity, as locking up the goods, or burying the corpse of the deceased, will not amount to such an intermeddling as will charge a man as executor of his own wrong. Such a one cannot bring an action himself in right of the deceased, but actions may be brought against him. And in all actions by creditors against such an officious intruder, he shall be named an executor generally; for the most obvious conclusion which strangers can form from his conduct is, that he hath a will of the deceased, wherein he is named executor, but hath not yet taken probate thereof. He is chargeable with the debts of the deceased, so far as assets come to his hands; and against creditors in general, shall be allowed all payments made to any other creditor in the same, or a superior degree, himself only excepted. And though as against the rightful executor or administrator he cannot plead such payment, yet it shall be allowed him in mitigation of damages. Unless perhaps upon a deficiency of assets, whereby the rightful executor may be prevented from satisfying his own debt. But though a person hath not meddled with the goods of the testator, and is therefore not



compellable; yet if a legacy is left to him, he may be compelled to stand to the executorship, or else to lose his legacy. The refusal to take upon him the executorship cannot be by word only, but it must be entered and recorded in court.

The first duty incumbent on an executor or administrator, is, to bury the deceased in a manner suitable to the estate he leaves behind him. Necessary funeral expences are allowed previous to all other debts and charges; but if the executor or administrator is extravagant, it is a species of devastation, or waste of the substance of the deceased, and shall only be prejudicial to himself, and not to the creditors or legatees of the deceased. The will of the deceased must be duly proved, which is done either in common form, or in more solemn form of law. When a will is not litigated, the oath of the executor only is sufficient for the probate of it in common form. But where the testament is to be proved in form of law, it is requisite that such persons that have interest, that is to say the widow and next of kin to the deceased, to whom the administration of his goods ought to have been committed if he had died intestate, be cited to be present, at the probation and approbation of the testament. In whose presence this will is to be exhibited to the judge, and petition made by the party that prefers the will, and an order made for the receiving, swearing, and examining of the witnesses thereupon, and for the publishing or confirming thereof. Witnesses are thereupon received and sworn; and examined every one of them secretly and severally, not only upon allegations or articles made by the party producing them, but also upon interrogatories from the adverse party; and their depositions being committed to writing, if the proof of the will is sufficient, the judge pronounces for its validity. If a will is proved only in the common form, the executor is compellable to prove it again in due form of law: and if the witnesses are dead in the mean time, it may endanger the whole testament, unless ten years, or as some say thirty, (the latter of which is the time established by common opinion) are passed since the probation; after which term it possesses a prescriptive right. But if the testament is proved in due form of law, the executor is not to be compelled to prove it any more; and notwithstanding all the witnesses die, the testament still retains its force. When the will is so proved, the original must be deposited in the registry of the ordinary, and a copy thereof in parchment, under the seal of the ordinary, delivered to the executor or administrator, together with a certificate of its having been proved before him: all which together is usually styled the *probate*. In defect of any will, the person entitled to be administrator must also at this period take out letters of administration under the seal of the ordinary; whereby an executorial power to collect and administer, that is, to dispose of the goods of the deceased is vested in him: and he is directed by the statute of distributions, to enter into a bond with sureties, faithfully to execute his trust. If all the goods of the deceased lie within the same jurisdiction, a probate before the ordinary, or an administration granted by him, are the

only proper ones: but if the deceased had *bona notabilia*, or chattels to the value of an hundred shillings, or five pounds, in two distinct dioceses or jurisdictions: then the will must be proved, or administration taken out, before the metropolitan of the province by way of special prerogative, whence the court where the validity of such wills is tried, and the office where they are registered, are called the prerogative court, and the prerogative office of the provinces of Canterbury and York. Where one dies possessed of goods in London and Dublin, in such case the resolution seems to have been, that the archbishop of Canterbury, by his prerogative, was to grant administration of the goods in London, and the archbishop of Dublin for those in Dublin. In case a person has *bona notabilia*, both in the provinces of York and Canterbury, the will must be proved either before both metropolitans, if within the jurisdiction of each there are *bona notabilia* in diverse dioceses; or else if in either of the provinces, the goods lay in one diocese, then the will must be proved before the particular bishops, in whose several dioceses the goods are. Or if the testator had goods in the jurisdiction of one metropolitan, laying in diverse dioceses, and in the other but in one diocese: then the will is to be proved before the archbishop, who has jurisdiction over the two dioceses, and before the bishop of the diocese besides. Where one dies possessed of goods in the diocese of an archbishop, and in a peculiar of the same diocese, where by prescription, or composition, or other special title, the probaton and approbation of the testaments of such as dwell and die there appertain to the judge of that peculiar, there shall be several administrations, and the archbishop shall have no prerogative, because the peculiar was first derived out of his jurisdiction. But a man who dies possessed of goods in several peculiars within the same diocese, administrations shall not be granted by the bishop of the diocese, but by the metropolitan, because they were exempt from ordinary jurisdiction.

The executor or administrator is next to make an inventory of all the personal effects of the deceased, both in possession or action, and likewise his credits. And when legally called upon, he is to deliver in such inventory upon oath. And it is said, that if an executor, without making an inventory, shall interfere in the administration of the goods of the deceased, except in certain cases; such as the funeral expences, the necessary preservation of the goods, and the like, he shall be bound to answer it to every one of his creditors, his whole debt. And therefore if any creditor or legatee affirms, that the testator had more goods than are comprised in the inventory, he must prove the charge, otherwise the judge is to give credit to the inventory, as being supposed to be made in due form of law. By the constitution of Othobon, the inventory shall be made in the presence of some credible persons, who shall competently understand the value of the goods belonging to the deceased; for it is not sufficient to make an inventory, unless the goods therein contained are particularly valued and appraised by some honest and skilful persons, to be the just value thereof in their



judgments and consciences; being estimated according to such price as the same might be sold for at that time. And as the time of exhibiting such inventory is left to the discretion of the ordinary, so may he remit the making of an inventory for a reasonable cause, as, where it may be expedient that the quantity of the goods should not be divulged. By the practice of the temporal courts, if the goods of the deceased shall be appraised by any honest persons in the neighbourhood, and reduced into an inventory, and afterwards such inventory is exhibited before the judge who proved the will, or granted administration upon the oath of the executor or administrator; such inventory shall receive credit in all causes and courts; and he that exhibits it shall be freed from the burden of proving the truth thereof, or that the testator had no more goods; but the legatee, or other persons preferring claims, are bound to prove that goods have been omitted therein.

But after the inventory is exhibited, a creditor shall not be admitted to object thereto in the ecclesiastical court; for the statute which requires the executor or administrator to make an inventory, only enjoins them to deliver it upon oath into the keeping of the ordinary; and the ordinary, by the same statute, is required to receive the same so presented or tendered to be delivered.

He is next to collect in all the goods and chattels so inventoried; and to that end he has very large powers and interests conferred on him by law; being the representative of the deceased, and having the same property in his goods as the principal had when living, and the same remedies to recover them. Whatever is so recovered that is of a saleable nature, and may be converted into ready money, is called assets, in the hands of the executor or administrator; that is, sufficient or enough (from the French assez) to make him chargeable to a creditor or legatee, so far as such goods and chattels extend. Whatever assets so come to his hands he may convert into ready money to answer the demands that may be made upon him. The executor is next bound to satisfy the legal claims of creditors upon the effects of the testator. And herein the king, if a creditor, shall be first satisfied: next such debts as are by particular statutes to be preferred to all others; as the forfeitures for not burying in woollen; money due on poor rates; for letters to the Post Office; and some others. The next in order to be discharged are debts of record; as judgments, (docketed according to the statute 4 & 5 W. & M. c. 23,) statutes and recognizances. Then follow debts due on special contracts; as for rent (for which the lessor has often a better remedy in his own hands, by distraining or upon bonds, covenants, and the like, under seal. Lastly, debts on simple contracts, viz. upon notes unsealed, and verbal promises. Among these simple contracts, servants wages are by some preferred to any other, and with great reason: Among debts of equal degree, the executor or administrator is allowed to pay himself first, by retaining in his hands so much as his debt amounts to. But an executor of his own wrong is not allowed to retain: for that would tend to encourage creditors who should first take possession of the

goods of the deceased ; and would besides be taking advantage of their own wrong, which is contrary to the rule of law. If a creditor constitutes his debtor for his executor, that is a release or discharge of the debt, whether the executor acts or no ; provided there be assets sufficient to pay the testator's debts : for though this discharge of the debt shall take place of all legacies, yet it was unfair to defraud the testator's creditors of their just debts, by a release which is absolutely voluntary. Also if no suit is commenced against him, the executor may pay any one creditor in equal degree his whole debt, though he has nothing left for the rest ; for without a suit commenced, the executor has no legal notice of the debt. If there are two creditors in equal degree, and both sue ; if the executor by covin helps the creditors who instituted the suit last to his judgment and execution first ; and there are no assets left to pay the other creditor, he must be satisfied out of the executor's own estate, if this covin is proved against him. But the confession of an action where there is a real debt, is no covin ; and such recovery by confession is a good plea for the executor against another creditor. If an heir is sued on the bond debt of his ancestor in which he is bound, and he pays the money, the executor shall reimburse him as far as there are personal assets of the testator's come to his hands, if it is not otherwise ordered by the will. If a man dies indebted by bond, and seised in fee of diverse lands, part of which he devises to one, and other part he permits to descend to his heir, (not mentioning them in his will) the lands permitted to descend shall be first applied to pay the bond debt. And the reason is, because the applying the devised lands to pay the bond debts, would disappoint the will, which equity will not permit, if it can be avoided ; whereas it no way disappoints the will to say, that the lands not mentioned should be in the first place liable to pay the debts. But it seems it would be otherwise, if the testator had devised his lands to his heir at law ; for though such devise were void as to the purpose of making the heir take otherwise than by descent ; yet it shews the testator's intent, that the heir should have the land ; and therefore it seems, that the lands devised to one, and the other lands devised to the heir at law, should in such case contribute in proportion to pay the bond debts. Also for the abovementioned reason, it seems that the lands permitted to descend to the heir at law, and not mentioned in the will, shall be applied to pay the bond debts, before a specific legacy ; lest otherwise the testator's intention should be disappointed.

So where lands, upon which there was a mortgage, were devised to one, and other lands descended to the heir at law, it was decreed by the lord chief justice Hardwicke upon great deliberation, that where the personal estate is insufficient to discharge the incumbrance, the ultimate fund is the land descended to the heir at law : and although the creditor may come on which fund he pleases ; yet if he proceeds against the lands mortgaged, the devisee may have his remedy over against the heir at law. Otherwise the mortgage might exhaust the whole lands devised, and there would be no benefit in the will to the devisee.



The executor is bound to pay legacies so far as the assets extend ; but herein he cannot give himself the preference as in the case of a debt. A legacy is a bequest or gift of goods and chattels by testament ; and the person to whom it is given is styled the legatee : which every person is capable of being, unless particularly disabled by the common law, or statutes : as traitors, papists, and some others. This bequest transfers an inchoate property to the legatee ; but the legacy is not perfect without the assent of the executor ; for if I have a general or pecuniary legacy of 100l. or a specific one of a piece of plate, I cannot in either case take it without the consent of the executor. For in him all the chattels are vested ; and it is his business first of all to see whether there is a sufficient fund left to pay the debts of the testator ; the rule of equity being that a man must be just, before he is permitted to be generous. If, the legatee dies before the testator, the legacy is a lost or lapsed legacy, and shall sink into the residuum. And if a contingent legacy is left to any one ; as, when he attains, or, if he attains the age of twenty-one years, and he dies before that time, it is a lapsed legacy. But a legacy to one to be paid when he attains the age of twenty-one years, is a vested legacy ; an interest which commences *in præsentia*, although it be *solvendum in futuro* : and if the legatee dies before that age, his representatives shall receive it out of the testator's personal estate, at the same time that it would have become payable, in case the legatee had lived. But if such legacies are charged upon a real estate, in both cases they shall lapse for the benefit of the heir. And in case of a vested legacy, due immediately, and charged on land, or money in the funds, which yield an immediate profit, interest shall be payable thereon from the testator's death ; but if charged only on the personal estate, which cannot immediately be got in, it shall carry interest only from the end of the year after the death of the testator. A legacy is not barred by the statute of limitation, so that a legatee may claim it twenty years after the death of the testator. But if the legatee takes a bond of the executor for his legacy, it is extinguished. Legacy given out for a term of years, if the term determines, the legacy is extinct. A legacy of a lease of tythes is extinguished by a renewal of the lease ; but a republication of the will after the renewal restores the legacy. A legacy was devised out of debts due in several counties, and they were all called in before the testator's death ; yet the legacy remained good. And a difference was taken between a pecuniary and a specific legacy ; for in the first case the legacy will remain, though the debt upon which it is charged is paid in ; but the specific legacy may be lost by being changed. So where the legacy was greater than the debt out of which it was directed to be paid amounted to, yet such sum being expressly devised, and there being assets, it was directed to be paid.

It has been said, that an executor is not bound to pay a legacy without security being given him to refund in case there happens to be a defect of assets. But lord Hardwicke declared that legatees are not obliged to give security ; as common justice will

compel them to refund in such a case, although no security has been given for such purpose. If an executor voluntarily pays a legacy, he may be obliged if solvent to pay the rest; but if the executor prove insolvent, the court will admit a bill by the unsatisfied legatees to compel such legatee to refund. And much more shall a creditor oblige a legatee to refund on a defect of assets. But if an executor had at first enough to pay all the legacies, and afterwards by his wasting the assets occasions a deficiency, the legatee who has recovered his legacy shall have the advantage of his legal diligence, which the other legatees neglected by not bringing their suit in time.—On a bill by an executor against a legatee, to refund a legacy voluntarily paid him by an executor, the assets falling short to pay the testator's debts; it was decreed by Sir Joseph Jekyll, master of the rolls, that the defendant should refund to the plaintiff: and that an executor may bring a bill to refund a legacy voluntarily paid him, as well as a creditor; for the executor paying a debt of the testator out of his own pocket, stands in the place of the creditor, and has the same equity against a legatee to oblige him to refund. But where a specific legacy is devised, the legatee shall have it entire, though there are not sufficient assets to pay the rest of the legacies. And as there is a benefit to a specific legatee that he shall not contribute; so there is a hazard the other way; for instance, if such specific legacy being a lease, be evicted; or being goods, be lost or burnt; or being a debt, be lost by the insolvency of the debtor; in all these cases the specific legatee shall have no contribution from the other legatees, and therefore shall pay no contribution towards them. But the devise of an annuity for life charged on the personal estate, where there is a deficiency of assets, shall abate in proportion with the other legatees: for this is not to be considered as a specific legacy. Also charities, though preferred by the civil law, yet they ought to abate in proportion. And if the testator's personal estate is not sufficient to pay all legacies, the executors having legacies bequeathed them shall abate in proportion with the other legatees; even though their legacies be given them for their care and trouble, and not generally; for those are only words of course; and as they need not take upon them the office unless they please, they accept the legacies subject to that contingency. In like manner land legatees and money legatees shall abate proportionably. If the executor has only bad debts he may offer to assign them to the legatee, and may be thereby discharged. If a man gives legacies to his daughters, charging his real estate with the payment thereof: and other legacies to his brother, without charging his real estate with the payment of these; if the daughters recover their legacies out of the personal estate, then the brother shall stand in the place of the daughters, and take so much out of the land for his legacy, as the daughters had exhausted out of the personal effects. According to Dr. Swinburne, if an executor has made a legal inventory, he is not compellable to pay to any legatee his whole legacy, if there is a danger of assets falling short, notwithstanding such legatee is first



named in the will ; or though it is thereby directed, that such an one shall be paid in the first place : but he may retain a rateable part or proportionable deduction from every legacy, except only in some certain cases ; such as, when a specific legacy is bequeathed, as a ring, or a horse : likewise where a father bequeaths something to his daughters, for their dowers, or towards their marriage ; or when he bequeaths any thing in satisfaction or recompence of some injury which he has done, or of goods ill gotten ; for rather than such legacies shall be diminished, all other general legacies consisting in quantity shall remain wholly unsatisfied.

Where there are divers executors named in a will, and some of them refuse to act, and others of them prove the testament ; those who refuse may afterwards administer at their pleasure, notwithstanding their refusal before the ordinary. But it is generally held, that they must come during the life-time of the acting executor, though it is said, that such shall be preferred after the death of the executor, before any other executor made by a co-executor. Where there are more than one executor named in a will, and one only proves the testament, and afterwards the others administer, the form of proceeding is as follows : the first that comes in takes probate in the usual form ; with reservation to the rest : afterwards if another comes in, he also is to be sworn in the usual manner ; and an engrossment of the original will is to be annexed to such probate, in the same manner as the first. And in the second grant, such first grant is to be recited ; and so on, if there are more that come in afterwards. If a man makes two executors and dies, and one of them proves the will in the name of both, against the will of the other ; this is not any administration for him who did not consent to the probate, but he may plead *ne uneque executor* ; for the probate does not make him executor, if he does not administer. Swinburne says, when all the executors named in a testament refuse, it is lawful for the bishop or ordinary to commit administration ; and to annex the will to the letters of administration ; and the administrators shall have action ; and may administer the goods of the deceased, as if he had died intestate ; and their authority or act done is good and effectual in law in the mean time, until the executors undertake the executorship ; for then the ordinary may revoke the administration before by him committed. The refusal to take upon him the executorship, cannot be by words only ; but it must be entered and recorded in court.

Executors shall have a writ of account, and the same action and process in such writ as the testator might have had if he had lived. And the same power is given to executors to recover damages by trespass committed against the testator in his life-time. And executors are invested with the same power, and an action of debt may be brought to recover arrears of rent that become due in right of the testator ; and an action upon the case is allowed to an executor to recover arrears of rent due upon an estate held for life by the testator ; and if he dies upon the day on which the sum was made payable, the whole ; or if before such day, then a pro-

portion of the rent according to the time such tenant for life lived, of the last year or quarter of a year; or other time in which the said rent was growing due; making all just allowances, or a proportionable part thereof respectively. All the executors represent the person of the testator, and therefore all suits to recover the testator's effect must be preferred in their joint names, whether all administer or not; but in suits commenced against them, only such as have administered need be named. If a man bequeath corn growing, or goods unto one, and a stranger will not suffer the executor to perform the testament; he shall sue the stranger in the spiritual court for such legacy.

The executor or administrator shall be allowed all reasonable expenses, as well in law suits, as for other honest purposes; and this reasonableness of expences to be such, as that he may receive thereby neither profit nor loss. Where an executor or administrator puts out money upon a real security, which at that time there was no reason to object to, and afterwards such security proves bad; he shall not be accountable for the loss. So if the executor pay the assets into the hands of a banker his co-executor, whom the testator used to entrust with his money; after which the banker fails, the executor shall not be chargeable with the loss. In all actions brought by executors or administrators upon contracts, bonds, or other things made to the deceased, or for goods taken away in his life time, they shall pay no costs by any statute. And as they are not to pay costs, so on the other hand they are not to be allowed any; because they are supposed to reimburse themselves any charges or expences they may have been at on account of the testator's or intestate's estate.—On a question whether an executor should be permitted to discontinue without payment of costs; Mr. Ashurst, for the plaintiff's executor, urged, that an executor should not pay costs in any instance except one, viz. where he had brought an action as executor, which he might have brought in his own name.—The court were clear, that the giving an executor leave to discontinue, was a matter of discretion in the court, and that they ought not to give him such leave in any case where he had knowingly brought his action wrong, unless he would consent to pay costs.

Where a devise is made of goods, if the executor will not deliver them to the devisee, he hath no remedy at the common law; for an action on the case will not lie against an executor for a legacy, unless he promise to pay it upon good consideration; for legacies are only to be recovered in the spiritual court, or in the courts of equity. And if a suit is instituted in the spiritual court, the devisee must obtain a citation against the executor of the testament to appear before the ordinary, to shew why he performs not the will of the testator. And where certain goods in specie are given to a man by will, he cannot take them without the executor's leave; so if a term for years is given to a man, he cannot enter into the land without assent; for it may be, the executor hath not assets besides to pay the testator's debts. And even if a man bequeaths goods to another, which are in the custody or that other person; yet if he



detain them from the executor, he not having assented to the legacy, the executor may have an action of detinue or trespass, or of trover after demand of the goods, against the said legatee. But in the case of a devise of lands it is otherwise; for the devisee may enter without the assent of the executor; and if the heir at law should enter before him, the devisee may enter and eject him. If a legacy is granted out of lands in fee simple, this shall not be sued for in the spiritual court, but at common law. But if lands are devised to be sold for the payment of legacies; the land being sold, the suit for the distribution of the money may be in the spiritual court; for the money is personal, and assets in the hands of the executors. But where a man devised that his executors should sell his lands, and out of the money which should be raised by such sale, gives a portion to his daughters; it hath been adjudged, that neither the land, nor the money, are testamentary, for it is not assets to satisfy debts, but a sum arising out of land, and appointed to special uses in way of equity, and not as a legacy, and therefore not to be sued for in the ecclesiastical court, but in a court of equity; and the ecclesiastical court cannot hold plea of a legacy in equity, but only where it is a legacy in law. But where the testator devised leases to his eldest son, and that out of the same he should raise such a sum of money for portions for his daughters, who libelled in the spiritual court for their portions; it was adjudged, that this should not be accounted as a rent issuing out of the lands, but as a testamentary legacy, and to be recovered in that court. It is said, that where the ecclesiastical court and a court of equity have a concurrent jurisdiction which ever is first possessed of the cause, has a right to proceed; and the same of all other courts. But where a husband has sued in the spiritual court for a legacy bequeathed his wife, the court of chancery has granted an injunction to stay proceedings; because the spiritual court cannot oblige him to make an adequate settlement on her. For the same reason where a personal legacy was given to an infant it was held that the same is more properly cognizable in chancery than in the ecclesiastical court. And if the matter had proceeded to sentence in the ecclesiastical court, yet it was proper to come into chancery for the executor's indemnity; for in the chancery, legatees are to give security for the money; but not in the spiritual court; and the chancery will see the money put out for the children. Legacies may be recovered in the spiritual court against an administrator, with the will annexed; or against an executor of his own wrong. An executor may, in some cases, be compelled to give security to pay a legacy; as where 1000*l.* was devised to a person to be paid at the age of twenty-one years; and upon a bill exhibited against the executor suggesting a *devastavit*, and praying that he might give security so pay the legacy when due, it was decreed accordingly. The testator devised 800*l.* to an infant, to be paid by his executor when the said infant should attain the age of twenty one years. The infant, by his guardian, exhibited a bill, that the executor might give security for the payment of the money. And so it was decreed.

Where there are divers executors, and some of them are dead, the legatee must sue the surviving executors, and not the executors or administrators of those that are dead. And if all the executors are dead, he must sue the executors or administrators of him who died last, and not the executors or administrators of the rest: and the reason is, because it is presumed that the goods of the deceased not administered by the other executors, remain with the surviving executor; or if they did not, it was thought his own default: because when the other executors were dead, he might and ought to have proceeded against their executors or administrators for restitution of the goods not administered.

If the testament is duly proved before the ordinary, the execution or administration of any goods shall not be committed but to such as are able, and if need, he shall give security to render a just account of their administration when they shall be duly required by the ordinary. And it is said, that the ordinary may remove the executor appointed by the testator from the administration, where he cannot give security for a due account; or for any other just cause. But Holt, chief justice, and the rest of the judges of the court of King's Bench determined; that when a man is made executor, nobody can add qualifications to him, other than those which the testator has imposed; but he shall be who, and in what manner, the testator shall judge proper. The executor has besides a temporal right, of which he is barred by the refusal of the probate, because he cannot before probate sue in Westminster Hall. And the court further observed in the same cause, that there were no precedents in the canon law to warrant the demand of security from the executor, and the practice has always been contrary. And if any cases happen in which equity may be requisite, there is another channel here where it runs, without resorting to the spiritual court, namely, the chancery. But where the executor was under the age of seventeen years, the court allowed a bond given by the administrator, with the will annexed, during the minority of the executor, to be good at common law, and not to be obtained by coercion.

If the executor die intestate, the testator also from that time shall be deemed intestate, and administration may in this case be committed of the goods not administered; but if the executor makes an executor and dies, his executor shall be executor to the first testator, in case there is no joint executor. And such a one has a right to all the profits, and is liable to all the charge that the first executor had, or was subject to. But the one testator's goods shall not stand charged with the other testator's debts, but each for his own.

Co-executors being in law but as one person, the act of one is the act of all; and the possession of one is accounted the possession of all, and the payment of debts by or to one of them is the payment of or to all of them: and the sale or gift of the testator's goods by one, is the sale or gift by all: and likewise a release before judgment of one of them, is a release of all. One executor cannot



regularly sue a co-executor in any matter relating to the testator's will; or that is within the power, interests, duty, or office of an executor.

It seems to be now settled, that where a man makes two executors, and devises to them the residue of his goods after debts and legacies paid, and one of them dies before a division of the surplus, that the survivor shall have the whole.

On an action of debt against two executors, if they plead severally by several attornies *fully administered*; and the jury find that the one has assets, and the other has not any assets, the judgment shall be only against him who is found to have assets, and the other who had not assets shall go quit.

When executors or administrators have fully discharged all the duties of their office, they are bound by their oath to make a true and perfect account to the ordinary whenever they shall be thereunto legally called. And such account must be passed by the same judge, or his surrogate, or successor, as granted the administration. But they are not compellable to make any account to the creditors or legatees extra-judicially. But an executor may expect an account from his co-executor extra-judicially. The creditors and legatees of the testator, as well as all persons having interest, are to be cited to be present at the making of the account; otherwise an account made in their absence, if they were not called, is not pre-judicial to them. If after due examination the ordinary finds the same to be true and perfect, and pronounces for the validity thereof, the executor or administrator ought to be acquitted and discharged from further molestation and suits, and cannot be called upon again by the ordinary. A party praying an account and having an interest, is not to be condemned in costs unless he objects to the account produced, and fails in his proof.

**ADMINISTRATION.** An administrator appointed *pendente lite* may maintain an action to recover the debts of the testator. And on a dispute in the ecclesiastical court concerning a probate; the court of chancery does not interfere to appoint a receiver of the personal estate. Administrators may have action to demand and recover as executors, the debts due to the personal intestate.

**ADMIRALTY.** The admiralty, and admirals of England, had formerly jurisdiction in all causes of merchants and mariners, both civil and criminal; not only on the main sea, but in all foreign parts, within and without the king's dominions; but by 28 Hen. 7. c. 15. all felonies committed on the sea, shall be tried by commissioners nominated by the lord chancellor.

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

*Criminal Jurisdiction.* The judge of the admiralty presides in this court, as the deputy of the lord high admiral: and the court may be held in any place. Of the commissioners nominated by

the lord chancellor, two common law judges are constantly appointed; and although the judges try the prisoner, yet the judge of the admiralty always presides.

ADULTERY. The action lies in this case for the injury done to the husband in alienating his wife's affections; destroying the comfort he had from her company; and raising children for him to support and provide for. And as the injury is great, so the damages given are commonly very considerable: but they are properly increased or diminished by the particular circumstances of each case; the rank and quality of the plaintiff; the condition of the defendant; his being a friend, relation or dependant of the plaintiff, or being a man of substance; proof of the plaintiff and his wife having lived comfortably together before her acquaintance with the defendant; and her having always borne a good character till then; and proof of a settlement, or provision for the children of the marriage, are all proper circumstances of aggravation. On the other hand, proof that the wife had before eloped with others, or that the husband had turned her out of doors, and refused to maintain her; and that he kept company with other women; or that he was acquainted with and consented to the defendant's familiarity with her, is proper in mitigation of damages. So the defendant may give in evidence, that the wife had a bastard before marriage, but he will not be permitted to give evidence of the general reputation of her being (or having been) a prostitute; for that may be occasioned by her familiarity with the defendant; though perhaps, after having laid a foundation by proving her being acquainted with other men; such general evidence may be admitted.

But in an action for *crim. con.* with the plaintiff's wife, lord *Mansfield* laid it down as clear law, that if a woman be suffered to live as a prostitute, with the privity of her husband, and a man is thereby drawn into *crim. con.* and the husband brings an action, it will not lie: It is a damage without an injury. If it be not with the husband's privity, it will not go to the action, let her be ever so profligate, but only to the damages. *Pratt*. Ch. J. of C. B. declared himself of the same opinion in a like case much about the same time. However, in the case of *Cipper* and *Sloper*, it was holden that the action lay, though the privity and consent of the husband to the defendant's connection with her, were clearly proved.

*Note*, In this action it is necessary for the plaintiff to prove a marriage in fact; which may be done either by a copy of the register, or by the testimony of one who was present at the ceremony. But

It is not necessary to call one of the subscribing witnesses to the register to prove the identity of the persons married, for a copy of the register is sufficient evidence of the marriage in fact between persons of the description there mentioned: and any evidence which satisfies a jury as to the identity of the plaintiff and his wife being the persons married is sufficient; as if the



hand-writing of the husband and wife to the register is proved ; or bell-ringers came to the parties and said they rung for the wedding, and were paid by them, or people dined at the wedding dinner ; or other circumstances to ascertain the persons.

Where the plaintiff proved articles between himself and his wife, purporting to be made after the marriage, of the wife's estate, and which were executed by the plaintiff and his wife, with the privity of her relations, and her uncle was the trustee in the settlement ; that she always went by the name of his wife, and was so considered by the relations on both sides ; and likewise proved cohabitation, this was holden not to be sufficient.

So where the defendant was surprised at a lodging with the plaintiff's wife, and on being asked where Major *Morris's* wife was, he answered "in the next room ;" this was holden not to be sufficient, for it is only a confession of the reputation, and that she went by the name of the defendant's wife, and not a confession of the fact of the marriage.

It has been doubted whether the ceremony must not be performed according to the rites of the church ; but as this is an action against a wrong doer, and not a claim of right, it seems sufficient to prove the marriage according to any form of religion, as in the case of Anabaptists, Quakers, or Jews.

The confession of the wife will be no evidence against the defendant ; but a discourse between her and the defendant may be proved. So letters written to her by the defendant may be read as evidence against him, but her letters to him will be no evidence for him.

As the gist of the action is the criminal conversation, and not the assault, the proper plea under the statute of limitation is not guilty within six years.

A motion was made for a new trial on an action for criminal conversation with the plaintiff's wife, on account of excessive damages. The jury (a special one) had given 500*l.* damages, the defendant was a clerk in the exchequer during pleasure, at a salary of 50*l.* a year only, which was his whole subsistence. The court were of opinion unanimously, that although there was no doubt of the power of the court to exercise a proper discretion, in setting aside verdicts for excessive damages, in case where the quantum of the damages really suffered by the plaintiff could be apparent, or were of such a nature that the court could properly judge of the degree of injury, and could see manifestly that the jury had been outrageous in giving such damages as greatly exceeded the injury ; yet the case was very different where it depended upon circumstances which were properly and solely under the cognizance of the jury, and were fit to be submitted to their decision and estimate ; and they held the case of criminal conversation with another man's wife to be of this latter kind : for the injury suffered by the husband, and the damages to be assessed, must in their nature depend entirely upon circumstances, which it was strictly and properly the province of the jury to judge of, and the motion was denied. In an action in

the court of King's Bench for criminal conversation with the plaintiff's wife, it was agreed by the jury that a verdict should be found for the plaintiff with 500*l.* damages, subject to the opinion of the court upon the following question, viz. Whether to support an action for a criminal conversation there must not be proof of an actual marriage? The fact was, they were married at May Fair chapel. The register book could not be admitted in evidence; Keith who married them was transported; and the clerk who was present was dead; so that the plaintiff could not prove the actual marriage by any evidence. It had been proved on the trial that articles had been made after the marriage between the husband and his wife, for the settlement of the wife's estate, with the privity of relations on both sides. Cohabitation, name, and reception of the woman as the wife, by every body was proved. And it was proved that the defendant Miller confessed to the landlord of the lodging, that she was captain Morris's wife, and that he had committed adultery with her. And it was insisted by Sir Fletcher Norton, that confession is the strongest evidence even of the highest crime. By lord Mansfield. I do not at present remember any action for criminal conversation where an actual marriage was not proved. Proof of actual marriage is always used and understood, in opposition to proof by cohabitation, reputation, and other circumstances, from which a marriage may be inferred. And the whole court were clearly of opinion, that in an action for criminal conversation with a man's wife, there must be evidence of a marriage in fact. Acknowledgment, cohabitation, and reputation, are not sufficient to maintain such action. And his lordship in delivering the opinion of the court, added, we do not at present define what may or may not be evidence of a marriage in fact. This is a sort of criminal action; there is no way of punishing this crime at common law; it ought not to depend upon the mere reputation of a marriage, which arises from the conduct of the plaintiff himself. In prosecutions for bigamy, a marriage in fact must be proved. No inconvenience can happen by a determination founded on such principles, but inconveniences might arise from a contrary determination, which might render persons liable to actions founded upon evidence made by the persons themselves who shall bring the action. And the plaintiff was nonsuit.

Where a man is taken in adultery with another man's wife; if the husband shall stab the adulterer so that he dies, he is guilty only of manslaughter. But it is said, not if he takes them in adultery by consent, for the one is forcible and felonious, but not the other. License by the husband to the wife to lay with another man cannot be pleaded in bar to an action of trespass by the husband, nor that she was a notorious lewd woman: but such evidence may be given in mitigation of damages. A man brings a suit for separation by reason of adultery against his wife in the spiritual court. The wife may recriminate, and may give in an allegation pleading adultery in her husband. The prayer on each side will be for a separation:



but if the party that is defendant in the original suit shall go on and prove the adultery, and the plaintiff shall not; the defendant will be entitled not only to a dismissal from the suit of the plaintiff originally brought, but to a separation upon account of the adultery pleaded by the defendant. If a man bring an action against B for lying with his wife, after which B assigns his estate to trustees, in trust to pay the several debts mentioned in a schedule, and such other debts as he shall mention within ten days; and A recovers 5000*l.* damages, and brings his bill to set aside this deed as fraudulent, and made to defeat him of his recovery: In this case A can have no other relief than to come in on the surplus, after the debts mentioned in the schedule; or appointed within ten days pursuant to it are satisfied. The deed being neither fraudulent in law nor equity. A being no creditor at the time of executing it; and it was conscientious in B to prefer his real creditors to one whose debt when recovered was founded on the debtor's own misdeed.

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

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

The right in an advowson, if severed from a manor, becomes *in gross*; which may return to the manor on certain contingencies. Thus if the manor be allotted to one coparcener, and the advowson on that manor to another; and the parcener who had the advowson dies without issue, it becomes *appendant* again. In like manner, if the demesnes are allotted to one parcener, and the service to the other; if the parcener of the demesne dies without issue, and the manor descend to her who had the service, the advowson becomes *appendant* as it was before. And where any two coparceners of a manor to which an advowson is *appendant*, makes partition of the manor without taking notice of the advowson, at every other turn it is still *appendant*; but otherwise if any particular exception to an advowson is made; it being then *in gross*. Advowsons *in gross* cannot descend from the brother to the sister of the entire blood, but the same shall descend to the brother of the half blood, unless the first had presented to it in his life-time; and then it shall descend to the sister; she being the

next heir of the entire blood. Where there are diverse patrons, and they vary in their presentation, if they are joint-tenants, or tenants in common of the patronage, the ordinary is not bound to admit any of the clerks; and if the six months pass, then he may present by the lapse: but he may not present within the six months, for if he do, they may agree, and bring a *quare impedit* against him, and remove his clerk, and so the ordinary shall be a disturber. But by the common law, if a patron has the patronage by descent, as co-parceners, then is the ordinary bound to admit the clerk of the eldest sister, for the eldest shall have the preference in the law if she will; and then at the next avoidance, the next sister shall present; and so by turns one sister after another, till all the sisters, or their heirs, have presented; and then the eldest sister, or her heirs, shall begin again; and this is called a presenting by turns, and is the constant method observed between coparceners in an advowson, excepting they agree to present together, or in some other manner, and if they do so, the agreement must stand. But if after the death of the common ancestor, the church voided, and the eldest sister presented together with another of the sisters, and the other sisters every one in their own names or together; in that case the ordinary is not bound to receive any of their clerks, but may suffer the church to lapse; for he shall not be bound to receive the clerk of the eldest sister, but where she presented in her own name singly. But where the right of presentation is in joint-tenant, or tenants in common, and there hath been no composition in writing to present by turns, they must of necessity join in the presentation; for if they present singly the bishop may refuse the clerk. This privilege of the elder sister to present first in turn goes to her assignee.

When an advowson descends to parceners, though one present twice, and usurp upon her co-heir, yet she who was negligent shall not be clearly barred, but another time shall take her turn to present when it becomes vacant. The clerk of a coparcener being once complete incumbent, though he is afterwards deprived, the turn is served; and so it is where by reason of some incapacity the institution was voidable by sentence declaratory, but not void, (as hath been held in case a layman is presented) because the church is full until such sentence comes. But if after presentation, institution, and induction, the church remains not only voidable, but by special declaration of the law merely and actually void, (as for not reading the articles and the like) there the turn is not served; but the presentor may present again, because the church was never full. If the person presented by a coparcener, is incumbent, and deprived, and the next presents; notwithstanding that the second is complete incumbent, yet if he is deprived, and the first restored, the turn is not served; because the restoring of the first is a re-continuing of his incumbency upon the footing of the former presentation, institution, and induction, who also dying incumbent will be the last presentee.

If co-parceners, or joint tenants, or tenants in common, are seized



of any estate of inheritance in the advowson of any church or vicarage, or other ecclesiastical promotion, and a partition shall be made between them to present by turns; thereupon every one shall be taken and adjudged to be seised of his or her separate part of the advowson to present in his or her turn: as, if there be two, and they make such partition, each shall be said to be seised, the one of the one moiety to present in the first turn; the other of the other moiety to present in the second turn; in like manner if there be three, four, or more, every one shall be said to be seised of his or her part, and to present in his or her turn.

If a man marries a woman possessed of an advowson, or the part of one, to her, and her heirs, he may not only present jointly with his wife during the coverture, but if the church being void, the wife dies, having no issue, he shall present to the void turn. But if there is issue by her, the right of presenting is vested in him as tenant by the courtesy. And it shall be so, although the right of patronage, so far as it was in the wife, descends to her heir; and though the wife did never present to it, but died before the church voided, she having thereby only a seisin in law; and if such husband die, after having presented to such church, and before the church is filled, the husband's executors shall have the turn, and not the heirs. Such marriages as are invalid for any of the reasons which are cognizable by the ecclesiastical court, cannot be considered as null in any temporal court, unless a sentence be actually obtained in the ecclesiastical court, declaring them to be. Therefore all property transferable in consequence of such marriage must be adjudged in the same manner as if the marriage was, to all intents and purposes, legal and unexceptionable, until such marriage is declared null and void. And if no such disannulling takes place during life-times of the parties, they are esteemed valid to all civil purposes, and the matter is no longer cognizable in the ecclesiastical court. Thus a man who marries his wife's sister, she dying, the ecclesiastical court was moved to annul the second incestuous marriage, and bastardize the issue; but the court of King's Bench granted a prohibition to stop proceedings, founded on this principle of reason, that one of the parties being deceased, the ecclesiastical censure could not operate, and all sentences there pronounced being, *pro salute animarum*, no such effect could in this case be produced. The marriage therefore was considered as valid with respect to the issue, who were deemed legitimate; but the surviving offended, the husband, was permitted to be proceeded against for incest.

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

their belief of the matter.—By the 16 & 17 Car. 2. c. 9. and the 4 Geo. 2. c. 21, the chancellors of the Duchy of Lancaster and of the County Palatine of Durham, are empowered to grant commissions to take affidavits there: and the persons receiving such affidavits shall take *one shilling* for so doing.—By 29 Car. 2. affidavits in the courts at Westminster may be taken before commissioners appointed by the Ld. Ch. Justice, or other judges; or, during the circuit, before the judge of assize; and the fee for such affidavit is *one shilling*. A voluntary affidavit is no evidence between strangers, except in such cases where a confession of the person making the affidavit would be evidence; as where a widow came for administration, the marriage being contested, an affidavit of the man himself was read.

**AFFINITY.**—*Prohibited Degrees of Consanguinity, or Relationship by Blood, as well as of Affinity, or Relationship by Marriage, of his Man's Part.*

A man may not marry his	{	Cons. 1. grandmother,	—	} second degree in the ascending right line.
		Affin. 2. grandfather's wife,	—	
		Affin. 3. wife's grandmother,	—	
	{	Cons. 4. father's sister,	—	} second degree in the ascending col- lateral line.
		Cons. 5. mother's sister,	—	
		Affin. 6. father's brother's wife,	—	
		Affin. 7. mother's brother's wife,	—	
		Affin. 8. wife's father's sister,	—	
		Affin. 9. wife's mother's sister,	—	
	{	Cons. 10. mother,	—	} first degree in the ascending right line.
		Affin. 11. stepmother,	—	
		Affin. 12. wife's mother,	—	
	{	Affin. 13. daughter,	—	} first degree in the descending right line.
		Affin. 14. wife's daughter,	—	
		Affin. 15. son's wife,	—	
		Cons. 16. sister,	—	
		Affin. 17. wife's sister,	—	
		Affin. 18. brother's wife,	—	
	{	Cons. 19. son's daughter,	—	} second degree in the descending right line.
		Cons. 20. daughter's daughter,	—	
		Affin. 21. son's son's wife,	—	
		Affin. 22. daughter's son's wife,	—	
		Affin. 23. wife's son's daughter,	—	
		Affin. 24. wife's daughter's daughter,	—	
	{	Cons. 25. brother's daughter,	—	} second degree in the descending collateral line.
		Cons. 26. sister's daughter,	—	
		Affin. 27. brother's son's wife,	—	
		Affin. 28. sister's son's wife,	—	
		Affin. 29. wife's brother's daughter,	—	
		Affin. 30. wife's daughter's sister,	—	



*Prohibited Degrees of Consanguinity, or Relationship by Blood, as well as of Affinity, or Relationship by Marriage, of the Woman's Part.*

A woman may not marry with her	Cons.	1. grandfather,	—	} second degree in the ascending right line.
	Affin.	2. grandmother's husband,	—	
	Affin.	3. husband's grandfather,	—	
	Cons.	4. father's brother,	—	} second degree in the ascending collateral line.
	Cons.	5. mother's brother,	—	
	Affin.	6. father's sister's husband,	—	
	Affin.	7. mother's sister's husband,	—	
	Affin.	8. husband's father's brother,	—	
	Affin.	9. husband's mother's brother,	—	
	Cons.	10. father,	—	} first degree in the ascending right line.
	Affin.	11. stepfather,	—	
	Affin.	12. husband's father,	—	
	Cons.	13. son,	—	} first degree in the descending right line.
	Affin.	14. husband's son,	—	
	Affin.	15. daughter's husband,	—	
	Cons.	16. brother,	—	} first degree in the descending collateral line.
	Affin.	17. husband's brother,	—	
	Affin.	18. sister's husband,	—	
	Cons.	19. son's son,	—	} second degree in the descending right line.
	Cons.	20. daughter's son,	—	
	Affin.	21. son's daughter's husband,	—	
	Affin.	22. daughter's daughter's husband,	—	
	Affin.	23. husband's son's son,	—	
	Affin.	24. husband's daughter's son,	—	
	Cons.	25. brother's son,	—	} second degree in the descending collateral line.
	Cons.	26. sister's son,	—	
	Affin.	27. brother's daughter's husband,	—	
	Affin.	28. sister's daughter's husband,	—	
	Affin.	29. husband's brother's son,	—	
	Affin.	30. husband's sister's son,	—	

The husband and wife being but one flesh, he who is related to one by consanguinity, is related to the other by affinity in the same degree.—Marriages in the ascending or descending line, that is, of children with their father, grandfather, mother, grandmother, and so upwards, are prohibited without limit, because they are the cause immediately, or mediately, of such children's being; and it is directly repugnant to the order of their nature, which hath assigned several duties and offices essential to each, that would thereby be inverted and overthrown. A parent cannot obey his child, and therefore it is unnatural that a parent should be wife to a child. Further, such absolute prohibitions are necessary to prevent the

incongruity, absurdity, and monstrous enormity of the relations to be begotten. The son or daughter for instance, born of the mother, and begotten by the son considered as born of the mother, would be a brother or sister to the father, but as begotten by him, would be a son or daughter. So the issue procreate upon the grandmother, as born of the grandmother, will be uncles or aunts to the father; but as begotten by the son, they will be sons or daughters to him, and this in the first degree of kindred. And though the idea of a man marrying his grandmother seems at the first view to be rather ridiculous, yet it is very far from being out of the course of nature to suppose it possible, and that there might be issue by such incestuous marriage. Suppose, for instances, a woman marries at twelve years of age, which she may legally do, and that she has a daughter born the next year, who, when arrived at marriageable years, is married, and has a son within a twelvemonth after, that son will be fourteen years old, and may of course marry when his grandmother is forty years of age, who is then very likely, in the course of nature to breed children. However, I cannot find that the Civilians have been much employed in annulling incestuous marriages contracted between men and their grandmothers, or their grandfathers wives; or between women and their grandfather's, or their grandmother's husbands, but an alliance not very remote from such a one happened by a man's marrying the wife of his great uncle, which was declared not to be within the Levitical degrees; but whether a man shall marry his wife's sister, or a woman her husband's brother, has been much agitated.

AFFRAY, this is a fighting between two or more, and differs from an assault; for the one is a common wrong, the other is an injury done to a particular person.

There must be a stroke given or offered, or a weapon drawn, or otherwise it is not an affray.

In the king's palace, malicious striking, whereby any blood shall be shed, is punishable with the loss of a hand, perpetual imprisonment, and fine at the king's pleasure. This is understood of a palace where the king is the actual resident. If a person draw his sword on any judge, in the presence of the Court of *King's Bench*, *Chancery*, *Common Pleas*, or *Exchequer*, or of justices of assize, or *oyer and terminer*, whether he strike or not; or if he strike any other person, with or without a weapon in such presence, though no blood be drawn, he shall lose his hand and goods, and the profits of his lands during life, and suffer perpetual imprisonment, if the indictment lay the offence as done *before the Lord the King*; and this is by the common law. And by shewing that the person so struck gave the first assault, is no excuse for this offence.

AGENT, a person appointed to transact the business of another. It is a principle of law, that whenever a man has a power, as *owner* to a thing, he may, as consistent with this right, do it by deputy, either as attorney, *agent*, factor, or servant. It has been asserted, that agents should be appointed by a formal power of



attorney; but this is not necessary, for the authority of an agent to draw, indorse, and accept bills in the name of his principal, is usually in words.

If a person be appointed a *general agent*, the principal is bound by *all* his acts. But an agent, *especially* appointed, cannot bind his principal by an act whereby he *exceeds his authority*.

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

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

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

Where a man comes to a shop to buy goods, and they agree upon a price, and a day of payment, and the buyer takes them away, detinue will not lie; because the property was changed by a lawful bargain; but if they agree for present money, and the buyer take the goods away without payment, detinue lies, because the property is not altered. So if a man sell goods on payment of money on a day to come, and the money be paid, and the goods not delivered, detinue lies, because the property is in the buyer; but earnest does not alter the property, but only binds the bargain; and therefore if no other time for payment be appointed, the money must be paid on fetching away the goods: the earnest gives the party a right to demand; but a bare demand without payment is void. After earnest the vendor cannot sell the goods to another, without a default in the vendee; and therefore if the vendee do not come and pay, and take the goods the vendor ought to request him; and then, if he do not in convenient time, the agreement is dissolved, and the vendor at liberty to sell to another person.

ALE HOUSES. Every inn is not an ale-house, nor is every ale-house an inn: but if an innkeeper uses the common selling of ale, his inn then becomes an ale house. So if an ale house *lodges* and entertains travellers, it also is an inn. Any person may erect

an inn, to lodge travellers, without any license or allowance for such erection.

In order to prevent disorders in ale-houses, the legislature has passed a variety of wholesome provisions, which we shall now give, in the order of time when they were severally made, viz.

By the 5 Edw. 6. no person shall keep an ale-house unless he be licensed in sessions; or by two justices (one of the *quorum*) on pain of three days imprisonment, and a fine to be imposed by the quarter sessions. The justices have power to put them down, and to take recognizances for keeping good order; but this act shall not restrain the selling of malt liquors in fairs.—1 Jac. 1. c. 9. alehouse-keepers permitting townsmen to sit tippling, are liable to ten shillings penalty, and on non-payment to be imprisoned till paid; and persons tippling therein, are to forfeit three shillings and fourpence, or sit in the stocks four hours. (It is much to be regretted that this act is not more rigorously enforced than it now is.)—4 Jac. 1. c. 4. selling ale to an unlicensed ale-house keeper, except for his own private use, incurs a penalty of six shillings and eightpence for every barrel to be recovered at the quarter sessions.—4 Jac. 1. c. 5. persons convicted of drunkenness are to forfeit five shillings, or be put in the stocks six hours.—If convicted a second time, to be bound over to their good behaviour; but the prosecution to be within six months. *ib.*—7 Jac. 1. c. 10. an alehouse keeper, convicted under either of the two last acts, is disabled to keep an alehouse for three years.—21 Jac. c. 7. One witness, or the party's own confession shall be sufficient; and the oath of the party confessing shall convict others.—1 Car. c. 14. alehouse-keepers permitting any person whatsoever to sit tippling, shall incur the penalty of 1 Jac. 1. c. 9. Vintners, keeping inns or victualling houses, to be also liable.—3 Car. 1. c. 4. persons keeping ale-houses without license are to forfeit twenty shillings to the poor, or be whipped; and for the second offence, to be committed to the house of correction for a month; but any person may, *during a fair*, sell malt liquors in booths.—2 Geo. 2. c. 28. (and also 20 Geo. 2. c. 31.) no license shall be granted, but at a general meeting of justices, on September the first, or within twenty days after, and the same shall be made out but for one year; notice is likewise to be given of the time and place for granting them; and persons selling brandy are to be licensed, and subject to the same rules as common alehouse-keepers.—17 Geo. 2. c. 17. victuallers having a license to retail spirits shall not, during the time of that license, exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for the sale of any spirits, upon pain of forfeiting the license, and also 10*l.* for every offence. Persons selling a less quantity than two gallons shall be deemed retailers. And the license shall not extend to any other than the house mentioned in it.—26 Geo. 2. c. 13. justices being brewers, inn-keepers, distillers, victuallers, or maltsters, are prohibited from granting of licenses for selling of ale, beer, or spirits, s. 12.—But now, by the 39 Geo. 3. c. 80. if in



cities and towns any justice shall be incapable by reason of his dealing in spirits, a justice of the county at large may act. s. 3.—26 Geo. 2. c. 31. justices licensing ale-houses are to take a recognizance in the sum of 10*l.* for the maintenance of good order; which recognizance must be sent to the clerk of the peace, on penalty of 3*l.* 6*s.* 8*d.* s. 1.—Licenses are to be granted to none, unless they were licensed the year preceding, or can produce certificates (except in cities and towns corporate, s. 16.) of their good fame.—Where a justice shall adjudge the recognizance to be forfeited, he is to summon the party to the quarter sessions, and the jury finding him guilty, the recognizance is to be estreated, and he is to be disabled from selling of beer or spirits for three years.—Where a justice shall suspect that any victualler sells ale or the like, without a license, he may summon him and the officer who surveys him, and examine such officer upon oath.—A justice upon information that any person is reasonably suspected of selling ale without license, is to summon the party and evidence before him; and persons summoned not appearing are to forfeit 10*l.*—The rights of the universities to grant licenses are reserved. The times of granting licenses for common inns and ale-houses in any city or town corporate are not altered. Parishioners are likewise declared to be competent witnesses. *Ibid.* s. 2. & seq.—30 Geo. 2. c. 24. publicans permitting journeymen, servants, or apprentices to game in their houses, are to forfeit 40*s.* and for the second and every subsequent offence 10*l.* which penalties are to be levied by distress and sale.—9 Geo. 3. c. 6. the powers, directions, and penalties, provided and established by any act made since 8 Geo. 2. as to selling *spirituous liquors*, without license, may be exercised, but transporting and whipping are to cease.

By 43 Geo. 3. c. 69. retailers of wine and spirits are to take out an annual excise license, and pay as follows:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every license to retail <i>foreign</i> wine in England, if the party has not a spirit or 'beer license . . . . .	5	4	0
_____ if the party has a beer license but not one for spirits . . . . .	4	4	0
_____ if he has also a spirit license . . . . .	2	4	0
_____ to retail <i>foreign wines</i> in Scotland, if the party has not a spirit or beer license . . . . .	3	6	8
_____ if he has a beer license, but not one for spirits . . . . .	2	13	4
_____ if he has also a spirit license . . . . .	1	6	8
_____ to retail spirits in Great Britain, if the party's house be rated under 15 <i>l.</i> . . . . .	4	4	0
_____ if rated at 15 <i>l.</i> and under 20 <i>l.</i> . . . . .	5	2	0
_____ if _____ at 20 <i>l.</i> and under 25 <i>l.</i> . . . . .	5	10	0
_____ if _____ at 25 <i>l.</i> and under 30 <i>l.</i> . . . . .	5	18	0
_____ if _____ at 30 <i>l.</i> and under 40 <i>l.</i> . . . . .	6	6	0
_____ if _____ at 40 <i>l.</i> and under 50 <i>l.</i> . . . . .	6	14	0
_____ if _____ at 50 <i>l.</i> or upwards . . . . .	7	2	0

30 Geo. 2. c. 38. licenses shall continue in force till October 10. ensuing the granting thereof, and if granted between the 5th of April and Oct. 10, a rateable proportion only to be charged. The licenses are to be renewed annually, and persons retailing without a license, or not renewing it, forfeit 50*l.* s. 8, 9—On death or removal of licensed persons, the commissioners of excise may authorise the executors or assignees to carry on the trade for the remainder of the term: one license is sufficient for a partnership in a house; and the license is not to authorise the party to retail in any other house than that for which it was granted. But this shall not prejudice the privileges of the two universities, nor the company of vintners, or any town corporate; but freemen of the vintners' company by *redemption* must take out licenses: and the letters patent for licensing taverns at St. Albans are confirmed. s. 10, 11—Persons selling *foreign wine* in less quantities than equal to the measure first imported, or *British made wines* in the quantity of twenty-five gallons or under, or *spirits* in less than two gallons, shall be deemed retailers. s. 15.—By 48 Geo. 3. c. 143. the stamp duties on licenses to retail ale shall after Oct. 10 cease, and in lieu thereof the ale-house-keeper, or victualler, shall take out an *excise* license for the purpose, and pay for the same a license duty of 2*l.* 2*s.* And such licenses shall be taken out from the excise within ten days next after the date of the justices' license, and shall continue in force until the 10th of October ensuing, and no longer; and such license is to be renewed annually within ten days after the expiration of the former, and no one shall retail ale, beer, or the like, without such annual excise on pain of 50*l.* But no excise license shall be granted, except to such persons only, as have been *previously licensed* by the justices; and this act shall not affect any former regulations, as to licenses to be granted by the magistrates; and clerks to justices are entitled to the same fees as heretofore.—If persons be disabled by conviction to keep an ale-house they are to forfeit this license, and cannot afterwards sell any liquors there under. s. 1. to 11.

By 32 Geo. 3. c. 59. if ale-house-keepers die, or remove, before the expiration of their licenses, new ones may be granted to the executors, or new tenants, till the next licensing day, obtaining within thirty days after such death or removal, the usual certificate, and entering into the recognizances, which certificates and recognizances are to be sent to the clerk of the peace to be renewed. s. 1.—In Middlesex and Surry the justices at the general licensing meetings are to appoint special ones, not less than six, nor more than eight, in each year: at which they may grant, on the removal of licensed persons, a continuance of the license, or a new one to the succeeding occupier, producing the certificate and entering into the recognizance.—But no new licenses may be granted at the petty sessions to houses not licensed at the general licensing day. s. 4.—Nothing herein contained is to extend to alter the times of granting licenses; or oblige persons licensed the year preceding to produce certificates.



s. 5.—Persons entering into licensed houses, without the authority of the justices, are liable to the penalty of retailing without license. But persons obtaining the necessary certificates are indemnified till the petty sessions. And the clerk of the peace shall record the continuance of licenses. s. 6—8. No person shall sell wine by retail to be drunk in his own house without having a beer license, and justices are to have the same jurisdiction over such retailers of wine as they have over sellers of beer, who are to be subject for retailing wine without a license to the same penalties as for retailing ale without license. This act is not to extend to the vintner's company, the universities, or St. Alban's; but freemen of the vintner's company by purchase since October 11, 1792, are not exempted. s. 9, 11.

By 35 Geo. 3. c. 113. persons selling, or permitting to be sold, in their houses, exciseable liquors by retail without a license, shall forfeit 20*l.* and the costs of conviction. s. 1.—Any justice may determine complaints; and if the penalties are not paid on conviction, if the party is present, or if absent, within three days after notice thereof, the same to be levied by distress. s. 2.—The officers shall execute their warrants agreeably to 27 Geo. 2. c. 20; the provisions of which, and of 33 Geo. 3. c. 55. as to execution of warrants, are to extend to this act. s. 2.—Distress may be sold within four days, and the officer to be allowed not exceeding 5*s.* per day, and his assistants 2*s.* s. 3, 4.—Half the penalty to the informer, and the other half to the poor of the parish; and if sufficient distress cannot be found, the justice may commit the offender for not exceeding six nor less than three calendar months. s. 5.—The leaving a summons at the place where the offence is committed, and affixing a copy thereof at the door, is sufficient notice, to compel persons to answer informations for selling liquors by retail without a license. s. 6.—Retailers shall make previous entry at the excise office of all places used for laying beer, ale, cyder, perry, and other exciseable liquors, on pain of 50*l.* and places not entered shall be deemed concealed places—Such liquors, and goods, and chattels, found where any offence is committed, to be liable to distress.—Persons making entry to be deemed retailers: justices may summon excise officers, to produce entries, and stock books, and may summon retailers to produce licenses; and for not producing them may adjudge the defaulters guilty.—A penalty of 10*l.* on witnesses not attending summonses, shall be levied by distress, and if sufficient cannot be found, the party may be committed for not exceeding six months: the penalty to be applied to the use of the poor of the parish.—Goods liable to seizure may be distrained wherever found, and justices may indorse warrants for seizing goods removed into their jurisdictions. s. 7 to 11.—Appeals are allowed to the next quarter sessions, unless held within six days after conviction, and then to the next subsequent sessions, which may finally determine such appeals, and adjudge costs. s. 12.—Justices may mitigate penalties in the case of a first offence, but not less than 10*l.* Inha-

bitants may be witnesses, and penalties are to be determined in six months. s. 13, 14, 15. But this act shall not prohibit the selling of ale, or beer, at fairs. s. 17.—By 38 Geo. 3. c. 54. s. 13. the penalty in the last act is not to extend to beer, or ale, sold in casks containing not less than five gallons, or in bottles not less than two dozen quarts.

ALIENS, are persons not born within the dominions of the crown of England, or within the allegiance of the king; but from this rule of law must be excepted the children of the kings of England, and the children of British ambassadors born abroad. No *alien* can be a revenue officer, or hold any office under the crown. The issue of an *English woman* by an *alien*, born *abroad*, is an *alien*.

Aliens can have no heirs, because they have not in them any inheritable blood.

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

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

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

Every foreign seaman, serving on board an English ship *two years*, in time of war, is, by 13 Geo. 2. c. 3. naturalized.

By 43 Geo. 3. c. 155. aliens not departing the united kingdom when ordered by proclamation, may be committed to goal; and such aliens returning, may be transported for life. Aliens disobeying orders, to be imprisoned, for the first offence, one month; for the second, two months. One secretary of state, or the lord lieutenant, or his chief secretary may grant warrants to conduct aliens out of the kingdom, not obeying proclamation. Copy of conviction, and circumstances of the alien, shall be transmitted to the secretary of state. Masters of vessels shall give to officers of customs a declaration of the names of aliens on board. Aliens shall not land till the master of the vessel has made the declaration required, and permission be obtained, on penalty of imprisonment; and masters landing aliens contrary hereto, shall forfeit 50*l.* per man, and the boats used in landing them. Captains of ships neglecting to make declarations of aliens, shall forfeit 20*l.* per man. Aliens arriving, and aliens departing, shall make a declaration to the officer of the customs, of their name, rank, and business, on pain, on conviction before a justice, to be imprisoned for one month. Aliens shall receive certificates from the officers of the customs; but the act does not extend to mariners certified to be employed in navigating vessels; and masters refusing to give such certificates, to forfeit 15*l.* or be imprisoned one month. Arms shall be seized, if attempted to be brought by aliens, other than as mer-



chandize. His majesty may direct aliens to land at particular places only, and masters acting contrary to such direction shall forfeit 40*l.* per man, and the ship. No aliens shall depart from the place of arrival without a passport, and passports may be refused, and aliens committed. Persons forging passports, to be imprisoned, on conviction, for not exceeding three months, and afterwards quit the kingdom; and returning, to be transported for seven years. His majesty may order aliens to be detained in custody to the kingdom. His majesty may order the residence of aliens to be at particular places, and persons not obeying such orders are liable to six months imprisonment. His majesty may order all aliens to give an account of all their weapons, arms, and the like, which they shall accordingly deliver up, and shall not have, or buy any, without license, on pain of imprisonment, for not exceeding one month: and the houses of aliens may be searched for arms. His majesty may require all aliens to register themselves, and obtain licenses of residence, which may be limited, revoked, or renewed: and the penalty of being at large, without such license, is six months imprisonment. If the persons authorised to grant such licenses think fit to refuse them, the parties shall be committed, until the circumstances shall be certified to the secretary of state, and licenses shall be forfeited, if aliens are found out of their districts, and fresh licenses may be granted in lieu of licenses lost. No alien shall quit the realm without a passport, and masters of ships, privy to such departure without a passport, shall forfeit 50*l.* and the alien be imprisoned not exceeding two months; but this does not extend to mariners. s. 1 to 27.—Aliens having quitted France on account of the troubles, shall not be liable to arrest, or execution, for debts contracted out of the British dominions. s. 28. This is also confirmed by 41 Geo. 3. (u. k.) c. 106. Aliens not going according to their passports, are liable to the same penalty as if they were found without one, 43 Geo. 3. c. 155. s. 29. Housekeepers shall require aliens coming to lodge, to produce their license, and send a copy to the next justice, on pain of 10*l.* copies of which notices shall be sent weekly, in London, to an appointed office, and elsewhere quarterly, to the clerk of the peace. Lord mayors of London and Dublin, and other magistrates specially authorised, may apprehend and examine aliens, and transmit their proceedings to a secretary of state. This act is not to affect ambassadors, or their servants, or aliens under fourteen. Proof, on allegation of alienage, shall lie on the alien: prosecutions for felony shall be by indictment: aliens adjudged to be transported, shall be sent to such places as shall be appointed by his majesty; and persons sentenced to transportation for life, found within the realm, shall be guilty of felony without clergy. Justices of courts of record may admit aliens to bail: also justices acting under the authority of the secretary of state may admit aliens to bail: an alien bailed may be indicted, and if verdict against him, committed, and sent out of the country. Penalties exceeding 40*l.* are recover-

able in the superior courts, and not exceeding 40l. before any justice, in a summary way.

By 45 Geo. 3. c. 32. foreign ships put under his majesty's protection by any capitulation, may be registered as prize ships, and be entitled to the privileges of British vessels, under certain regulations, and restrictions. And aliens in foreign colonies, surrendered to his majesty, may exercise the occupations of merchants, or factors taking the oath of allegiance.

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

**ALIMONY** signifies the allowance which a married woman sues for, and is entitled to from her husband upon separation from him. A wife cannot sue for alimony during cohabitation. And although they be separated, yet if the husband maintains her, it bars her claim thereto. If she elopes from her husband, the law will not oblige the husband to allow her alimony. The ordinary hath proper cognizance of alimony, it being a matter of ecclesiastical cognizance. And if the husband will not conform to the sentence pronounced against him, he may be excommunicated. No cause concerning the contract or dissolution of marriage, can be legally submitted to arbitration.

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

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

By 12 Ann c. 12, all process for arresting any ambassador, or his domestic servants, or for distraining his goods, shall be void: and the persons suing out such process shall be punished at the discretion of the lord chancellor, and chief justices, or any two of them.—No ambassadors shall protect any merchant or trader within the statutes of bankrupt. No person shall be sued for arresting an ambassador's servant, unless such servant's name be registered in the secretary's office, and be hung up in the office of the sheriffs of London and Middlesex.

**AMENDMENT**, is the correction of an error committed in any process, which may be amended after judgment; (but if there be any error in giving the judgment, the party is driven to his writ of



error; though, where the fault appears to be in the clerk who wrote the record, it may be amended.

By the 9 *Hen.* 5. c. 4. and also by 14 *Edw.* 3. stat. 1. c. 6. errors in record, owing to the misprision of clerks, of a letter, or syllable, may be amended, as well after judgment given, as before. But such acts shall not extend to Wales, or outlawries. 4 *Hen.* 6. c. 3.—By 8 *Hen.* 6. c. 12. no record shall be reversed for error assigned by reason of rasing interlineation, addition, or diminution. The judges may reform all defects in any record, process, writ, or return, (appeals, indictments of treason, or felony, and outlawries thereupon excepted) and variance between a record and a certificate shall be amended by the judges. *Ib.* and also 8 *Hen.* 6. c. 15. No judgment shall be reversed, for a variation from the exemplification, where the record is exemplified or inrolled. *Ib.*—By 5 *Geo.* 1. c. 13. writs of error varying from the record, may be amended; except in criminal matters.

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

The following statutes have been made for the better securing one private annuities, viz.

By 17 *Geo.* 3. c. 26. a memorial of all deeds, bonds, or other instruments for granting life annuities, shall, within twenty days after the execution thereof, be inrolled in the court of Chancery; which shall contain the date, names of the parties, and witnesses; otherwise every such deed, bond, or the like shall be void. Before judgment shall be entered of record, upon any warrant of attorney, for recovering any annuity already granted, and before execution shall be sued out, on any judgment already entered, a memorial shall be inrolled as aforesaid. All future deeds, bonds, and instruments for granting of annuities, shall contain the consideration, and the names of the parties at length, and if any part of the consideration shall be returned, or any notes shall not be paid when due, the court where the action is brought, may stay the proceedings, and order the deeds, bonds, and other instruments, to be cancelled. The clerk of the enrolments in chancery shall keep a particular roll for annuities, wherein he shall specify the time of enrolment, His fees are, one shilling for the first 200 words, sixpence for each 100 words after, and one shilling for a search. All contracts, for the purchase of annuities, with any person under twenty-one years of age, shall be void; and any person procuring or soliciting any minor, to grant an annuity, or any solicitor, scrivener, or broker, taking more than 10*s.* *per cent.* for procuring money for annuities, shall be punished by fine and imprisonment. This act not to extend to annuities, or rent charges by will, marriage settlement, or for advancement of a child; nor, if secured on lands of equal or greater value, if the grantor is seised in fee or tail, or if secured by stocks actually transferred, if the dividend is

of greater value; nor to voluntary annuities without pecuniary consideration, nor if granted by corporations, or by authority of act of parliament, or if under 10*l. per ann.* unless there be more than one from the same grantor to, or in trust for the same grantee.

An annuity granted to a feme-sole by indenture, she marrying the husband may release the grantor from payment thereof during coverture, but on his death, the right thereto reverts to the wife.

APOSTACY is a total renunciation of christianity, by embracing either a false religion, or no religion at all. By 9 and 10 *Will. 3. c. 32.* if any person educated in or having made profession of the christian religion, shall by writing, printing, teaching, or advised speaking, deny the christian religion to be true, or the holy scriptures to be of divine authority, he shall for the first offence be incapable of holding any office or place of trust; and for the second be incapacitated from bringing any action, being guardian, executor, legatee, or purchaser of lands, and shall suffer three years imprisonment without bail, except he repent within four months after his first conviction, and renounce his error in open court.

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

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

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

Although offences committed against the peace and good government of society are indictable in the name of the king, he being the grand conservator thereof, and justice is administered to the party aggrieved in the king's name; yet there are some offences which either the parties injured, or their relations, may prosecute by appeal. A rape is a crime for which the party may bring an appeal. If a woman under attainder of high treason be ravished, she being still under the protection of the law, even before pardon obtained, may prosecute her ravisher in the name of the king, and if he is found guilty on the indictment, and is pardoned by the king, after such pardon obtained she may maintain an appeal. And a feme covert without her husband may maintain an appeal of ravishment. The party accused may be tried by appeal either before or



after the trial by indictment. If before any indictment, and he is acquitted thereon, no indictment can be preferred against him for the same offence. On the other hand, if he has been tried by indictment, and acquitted; or found guilty and pardoned by the king, he is still liable to be prosecuted at the suit of the party by appeal, not having been punished for the crime of which he stands accused. An appeal may be commenced before the sheriff and coroner, and removed from them into the king's bench by *certiorari*. But justices of the peace are not empowered to receive appeals. If a person appealed shall be acquitted, and the appeal shall appear to the court to have been malicious, the appellor shall be imprisoned for a year, and restore damages to the party, and be heavily fined by the king. But if a verdict be given against the prisoner, his punishment is the same as if convicted by indictment; but herein the clemency of the king cannot interpose to stay the demands of justice; for it is considered as a private wrong done to an individual, and therefore a crime of such a nature as ought to exclude the intervention of the king's authority, as much as a verdict for damages obtained in an action of battery.

A wife may appeal against the murderer of her husband, or in the case of manslaughter; and she alone can do it, to the exclusion of all other relations, except the heir male on the death of his ancestor; but this right to appeal is vested only in the four nearest degrees of blood. And in case the wife marries again pending the appeal, it becomes void; or if she marries in the interval between judgment and execution, the execution is stayed. If the person killed leaves a wife free from the imputation of his murder, she only and not the heir shall have the appeal. If there be no wife, and the heir is accused of the murder, the person who next to him would have been heir male shall bring the appeal, if he be within the limited degrees of consanguinity. If the wife kills her husband, the heir may appeal her of the death; and by the statute of Gloucester, all appeals of murder must be sued within a year and a day after the death of the party. But if the murderer has been found guilty of manslaughter on an indictment, and has had the benefit of clergy, and suffered the judgment of the law, he cannot afterwards be appealed. If a man against whom judgment has been given in a case of high treason or felony, be slain without authority of law, his wife shall have an appeal. For though his heir is barred by the attainder, if it be high treason, which corrupts the blood, and dissolves all relations grounded on consanguinity, yet the relation grounded on the matrimonial contract continues till death. In all appeals of murder, the appellant must set forth the offence with the utmost certainty; declaring the fact; in what part of the body; the year, day, the town or place where the deed was done; and with what weapon. And it must likewise be described by such words of art, as the law has appropriated to that purpose.

A Release of all Actions, real and personal, will not discharge an Appeal of Felony, because it is an Action of a higher Nature; it is a Criminal Action, and must be released by the Word *Appeal*.

or by other general words, viz. All Actions criminal or mortal, &c.

But a Release of all personal Actions is a good bar to an Appeal of Mayhem, because Damages are only to be recovered therein.

Upon Not guilty pleaded in an Appeal of Mayhem, the Appellee cannot give in Evidence that he did it in his own defence, but he ought to plead it specially by way of Justification.

It is a good bar to plead a Recovery in Trespass, &c. and to aver, That the Wounding in the Appeal of Mayhem, and the Mayhem in the Trespass were all one.

But this Appeal is seldom brought; the usual way is, an Action of Trespass for an Assault, Battery, and Maiming, &c. and in this Action the Court may increase the Damages upon view of the Mayhem, and Affidavits of the expences; but then the word *Mayhemavit* must be in the Declaration, or the particular manner of the Mayhem must be expressed, which is the better way of declaring, for otherwise the Court cannot increase the Damages, unless the Judge before whom it was tried will certify the particulars, but he must be a Judge of the same Court.

Misnomer is a good plea in an Appeal.

The Teste of the *Capias* must bear date the same day with the Return of the Writ of Appeal; and so every new Process must be dated on that very day the other was determined; for the intermission of a day will make a Discontinuance, because by Law the Appellant must prosecute the Defendant *recenter & instanter*, so that the Appeal must be pursued *de die in diem*.

If there are several Defendants, and all outlawed, and then all of them join in a Writ of Error, and one alone appears, the Outlawry shall not be reversed, although there is a plain and manifest error in the proceedings, without the Appearance of all, nor then neither, until a *Scire Facias* issued to the Lords mediate and immediate.

The Defendants cannot imparl, but the Court may be adjourned by a *Dies datus* until such a day, and when they appear, and issue is joined, the Appellant must pray a *Venire Facias* immediately.

If the Appeal is removed by *Certiorari*, and the Plaintiff will not proceed, the Defendant may have a *Scire facias*, and upon *Nihil* returned, or a *Scire feci* and default, the Defendant is discharged.

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

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

*By attorney*, in all actions real, personal, and mixed, and for any



crime whatsoever under the degree of capital, by favor of the court.

*By guardian and next friend, when under age.*

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

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

A person cannot be bound apprentice but by deed indented; and this must be complied with for all purposes, except for obtaining a settlement. By 31 *Geo. 2. c. 11* the apprentice may gain a settlement under such writing, though it be not indented.

By 51 *Geo. 3. c. 80.* it is enacted, that all indentures for binding parish apprentices, and all certificates of the settlement of poor persons, which have been heretofore executed and signed by two persons only, acting as churchwardens and as overseers of the poor, and also all such indentures and certificates as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens and distinct persons as overseers of the poor, according to the said recited act; any thing therein or in any other act contained to the contrary thereof notwithstanding. But nothing in this act contained, shall extend to do away or alter any decision which may have taken place in any court of law, respecting the binding of any parish apprentice, or the settlement of any poor person before the passing of this act.

Where a premium is given with an apprentice, the indentures must be, if within the bills of mortality, within one month, and elsewhere within two months after the date, taken to the stamp-office in the former case: and, in the latter, either to the stamp-office, or the collector of stamp-duties, and the master or mistress pay the duties specified under the Title *Stamps*.

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

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

A man may, by law, chastise and correct his apprentice; but, if the master and his apprentice cannot agree, they may

be discharged at their mutual request, either at the quarter sessions, or by one justice, with appeal to the sessions; who may, if they think it reasonable, direct restitution of a rateable proportion of the money, given with the apprentice. But if an apprentice, with whom less than 10*l.* has been given, run away from his master, he is compelled to serve out his time of absence, or make satisfaction for the same at any time within seven years after the expiration of the contract. And, if an apprentice leave his master's service before his time be expired, his master is entitled to all his earnings. If a person entice away an apprentice he may be indicted, and the master has a remedy for damages by action. Whatever an apprentice gains is for the use of his master. The justices of peace may discharge an apprentice not only on the default of the masters but also on his own default; for, in such case, it is reasonable that the contracts, which were made by their authority, should be dissolved by the same power.

Masters and apprentices in the city of London are regulated by the customs of that city. By that custom, every apprentice bound to a freeman must be of 14 years of age, and his agreement must not be for a less term than seven years: and if he break any of the covenants, an action may be brought against him as if he were of full age.

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

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

Masters of ships from the burthen of 30 to 50 tons, to take one such apprentice, and one more for the next 50 tons, and one more for every 100 tons that such ship shall exceed the burthen of 100 tons.

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



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

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

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

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

The churchwardens and overseers, or the greater part of them, by the assent of two justices, one of whom shall be of the quorum, may bind any children whose parents they shall judge not able to maintain them, to be apprentices where they shall see convenient; if a man child, until he shall come to the age of twenty-four years; if a woman child, of twenty-one years, or marriage: and this they may do as effectually as if such child were of full age, and by indenture or covenant, bind him or herself; but the age of boys is restricted to twenty-one years, within the bills of mortality only; by which last act, the governors of the Foundling Hospital are invested with the same power as churchwardens and overseers of parishes.

No contract can be made between the justices of peace and the master of an apprentice for wages, or any thing on behalf of the apprentice, other than maintenance.

A master taking an apprentice from the parish, may assign him

over, and the justices cannot take cognizance of such assignment, it being held, that the master performs his covenant properly, by assigning him to another to provide for him; but if the assignee of the apprentice doth not provide for him, the first master may be compelled to do it.

The master of a parish apprentice dying intestate, if the widow, without any administration taken out, assign the apprentice over, with his consent, if barely verbally, to another master, residing in a different parish, and the apprentice live with such assignee forty days and upwards, he obtains a good settlement in that last place.

To entitle an apprentice to a settlement in the parish where he serves, it is necessary that the contract between him and his master be in writing—that it be duly stampd—and that it be indented.—An infant binding himself apprentice, thereby gains a settlement. For though he cannot bind himself by any deed, yet he may make an indenture for his own benefit, and such is that of an apprenticeship.

Binding apprentices for less term than seven years, is sufficient to gain a settlement. Such indenture is not void, but only voidable at the election of the parties themselves, if they think fit to take advantage of it: and not by a third person. It can only be avoided by the master or servant who are the parties to it, but not by the parish who have had the benefit of the service of this apprentice. So likewise a parish girl, bound apprentice until her age of twenty-one years, without the alternative, or till time of marriage, as the statute requires; this does not allow the parish to refuse such pauper a settlement. An apprentice was bound to a cobbler, who kept a stall in one parish, lived another, and the boy in a third. The session adjudged the settlement where the stall was, because the service was there.—But the order was quashed by the court. The boy has gained no settlement in any of the three parishes; for the stall is not sufficient to give him one, the master lying in another parish.

An apprentice, his master dying, and he being assigned over to another by his master's executor, he consenting to such assignment, and serving more than forty days the master to whom he is so assigned, he shall gain a settlement, although an assignment of an apprentice be not strictly legal. But a master dying before the expiration of the term for which his apprentice was bound, and the apprentice hiring himself for a year, and serving that year, gains him a settlement; for apprenticeship is a personal trust between master and servant, and is determined by the death of either master or apprentice.

A boy voluntarily binding himself apprentice to the sea service, shall not be impressed for three years from the date of his indentures: and a certificate shall be granted him without fee, his indentures being registered, and certificates thereof transmitted. But no person above the age of eighteen years, shall have any protection from being impressed, who shall have been in any sea service before he bound himself apprentice; but if he has never been used to the



sea before his binding himself apprentice to serve at sea, he shall be exempt from being impressed for three years, for which a protection from the Admiralty shall be granted without fee. And if such apprentice voluntarily enters into the king's service, his master, or any other claiming under him, shall be entitled to able seamen's wages, if such apprentice be found qualified to receive such wages.

APPROPRIATION, signifies the annexing a benefice to the proper and perpetual use of some religious house, college, or spiritual person, and their successors.

To make an appropriation (after licence obtained of the king in chancery) consent of the bishop, patron, and incumbent, must be had, if the church be full; and of the bishop and patron, if void. Where appropriations are made, a vicar must be endowed to serve the cure, &c.

Upon appropriation, the patron is perpetual parson, and hath perpetual institution and induction. But if a clerk be afterwards presented to the bishop, and instituted and inducted, the appropriation is dissolved; the benefice returns to its former nature.

The king's patentees, though laymen, are capable of parsonages appropriate of dissolved monasteries; and these are called impropriations.

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

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

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

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

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

A submission may be either *verbal*, or in *writing*; the latter is the safest, and in modern practice is generally adopted. Where such submission is in writing, it is most commonly by mutual bonds given by each party to the other, in a certain sum penal, on condition to be void, on performance of the award. It may also be

by indenture, with mutual covenants to stand to the award. Arbitration bonds may also be given to a third person, or even to the arbitrator himself; and they may further be given by other persons than the parties themselves, who will be liable to the forfeiture if the parties do not perform the award.

Persons agreeing to refer their disputes to arbitrators, may have such award made a rule of any of his majesty's courts, to be enforced by process of contempt; unless the arbitration ought to be set aside for the arbitrator's misbehaviour.

These following are the particular cases which may or may not be made the subjects of an award: viz.

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

ARBITRATOR, is a private extraordinary judge between party and party, chosen by their mutual consents, to determine controversies between them. The *award of arbitrators* is definitive, and being chosen by the parties, they are not tied to such formalities of law, as judges in other cases are; and yet they have as great power as other judges, to determine the matter in variance; but their determination must be certain, and it must be according to the express condition of the bond, by which the parties submit themselves to their judgments. It is proper to fix a time when the arbitrators shall pronounce their award; but where the submission limits no time for making the award, that shall be understood to be within a convenient time. The increasing extent of our commerce has greatly multiplied references to arbitrators; hence numerous decisions have been made relative to their power and determinations. Some of the more important points will be found, *infra*, article AWARD.

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

ARCHES COURT, the judges whereof is called the dean of the arches; whose jurisdiction is properly over the thirteen parishes only, belonging to the archbishop of Canterbury, in London: but the office of dean of the arches having been united with that of the



archbishop's *principal official*, he now, in right of his last mentioned office, receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province.

**ARRAIGN, or ARRAIN.** To arraign the assize, is to cause the tenant to be called, to make the plaint, and to set the cause in such order as the tenant may be forced to answer thereto. To arraign a prisoner, is to bring him forth to his trial when he is indicted. The prisoner on his arraignment, though under an indictment of the highest crime, must be brought to the bar without irons, and all manner of shackles and bonds: a Deaf and Dumb man may be arraigned for a capital offence, if intelligence can be conveyed to him by signs or symbols.

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

**ARRAIGNMENT.** He is said to arraign a writ, that fits and prepares it for trial; and a prisoner is arraigned, when he is indicted, and brought to trial at bar.

No man is properly arraigned but at the king's suit on indictment found; and this arraignment is to take order that the party appear, and for certainty of the person, do hold up his hand, and plead a sufficient plea, &c. as the general issue, not guilty; or in abatement, or in bar; demur to the indictment, confess, &c.

If he do not plead, but stand mute, so as not to put himself on trial by his country, he shall suffer penance, pain, fort and duro, for felony, and forfeit his goods, &c. But not his lands, for want of conviction: It is otherwise for treason.

A defendant in an appeal acquitted, may be arraigned at the king's suit.

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

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

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

An officer cannot justify breaking open an outward door or win-

do to execute process, unless, a stranger, who is not of the family, upon a pursuit, take refuge in the house of another. The chamber of a lodger is not to be considered as his outer door. No officer shall carry his prisoner to any tavern without his consent, nor to gaol within 24 hours after his arrest, unless he refuse to go to some safe house.

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

No person shall be held to special bail, where the cause of action is under 15*l.* and the defendant shall not be arrested: (except where the cause of such action shall arise or be maintainable upon or by virtue of any bill or bills of exchange, promissory note or promissory notes, in which cases the parties liable thereupon may be held to special bail in such manner as if this act had not been made); and no special writ shall be sued forth, to compel appearance; and all proceedings on any such writ or process shall be void. No writ of distringas shall issue, for default of appearance; but defendant is to be served personally with the summons and a notice to appear. When the defendant does not appear, the plaintiff may proceed. Provisions of 19 *Geo.* 3. respecting actions for sums less than 10*l.* are hereby extended to sums under 20*l.* and so much of any acts as authorise arrests contrary to the above are repealed.

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

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



diately on demand, the said justices shall commit him to some house of correction for 18 months, to be there kept to hard labour. Burning of barns or stacks of corn, in the counties of Cumberland, Northumberland, Westmorland, and the bishopric of Durham, is felony without benefit of clergy. It is felony to burn any ricks of corn, or hay, or barns, in the night time, or any out-houses or buildings: but the convict may elect to be transported for seven years. The setting fire to any house, barn or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay or wood, or to rescue any offender, is felony without benefit of clergy. For other malicious burnings, see *Burning*.

ARTICLES OF THE NAVY. By the 22 Geo. 2. c. 33. the following articles are established relative to the government of his majesty's ships, vessels, and forces at sea, viz.

1. *Public worship shall be performed, and the Lord's day observed.*
2. *Profane swearing, drunkenness, or other bad behaviour, shall be punished at the discretion of the court martial.*
3. *Holding illegal correspondence with an enemy—death.*
4. *Not acquainting the superior officer with any message from an enemy—death, or other punishment at the discretion of the court martial.*
5. *Spies, and persons delivering seducing letters, are subject to the same punishment as in the last article.*
6. *Relieving an enemy—the like.*
7. *Not sending all papers found aboard prize ships to the admiralty—loss of share of capture, and other punishment at the discretion of the court martial.*
8. *Taking effects out of any prize before condemned—the like punishment.*
9. *Stripping or ill using persons taken on board a prize—to be punished at the discretion of the court martial.*
10. *Not preparing for fight, and encouraging the men in time of action, or cowardly yielding—death.*
11. *Disobeying orders in the time of action—death, or other punishment at the discretion of the court martial.*
12. *Cowardice, or neglect of duty in time of action—death, or such other punishment as the offender may deserve.*
13. *Not pursuing the enemy, and not assisting a friend—the like.*
14. *Delaying or discouraging the service on account of wages or otherwise—death, or such punishment as the court martial shall inflict.*
15. *Deserting to the enemy, or running away with stores—death.*
16. *Deserting, or enticing others—to be cashiered.*
17. *Not taking care of ships under convoy—death, or such punishment as the court shall inflict.*
18. *Taking goods on board other than gold; silver, jewels, goods from a wreck, or such as the admiralty may order—to be cashiered and incapacitated.*
19. *Persons making any mutinous assemblies—death. Uttering seditious words—death, or other punishment at the discretion of the*

court. *Behaving contemptuously to the superior officer in the execution of his duty*—to be punished at the discretion of the court martial.

20. *Concealing mutinous practices or words*—to be punished at the discretion of the court.

21. *Endeavouring to stir up disturbance on account of unwholesome victuals*—the like punishment.

22. *Striking a superior officer, or disobeying his lawful commands*—death, or other punishment at the discretion of the court.

23. *Quarrelling or using reproachful speech*—to be punished at the discretion of the court.

24. *Wasting stores*—the like.

25. *Burning any magazine or vessel not belonging to an enemy*—death.

26. *Neglect in conducting and steering*—death, or other discretionary punishment.

27. *Sleeping on watch, or leaving the station*—the like punishment.

28. *Murder*—death.

29. *Buggery*—death.

30. *Robbery*—death, or other discretionary punishment.

31. *Making false Musters*—to be cashiered and incapacitated.

32. *Not apprehending prisoners, and permitting escapes*—discretionary punishment.

33. *Scandalous, oppressive, or fraudulent behaviour of officers*—to be dismissed the service.

34. *Mutiny, desertion, or disobedience on shore*—to be punished as at sea.

35. *Committing on shore any of the crimes punishable by these articles*—to be punished as at sea.

36. *Other crimes not capital, or not mentioned*—shall be punished according to the custom of the navy

But no imprisonment shall be longer than two years; nor shall the court martial try any offences except those specified in the 5th, 34th and 35th articles, which shall not be committed within the jurisdiction of the admiralty. No soldier on board any transport shall be tried by a naval court martial. The 22 Geo. 2. c. 33. also empowers the admiralty to grant commissions for holding courts martial to the commander in chief of any squadron; and in case he dies, the next in command may hold courts martial; but the officer next in command where there are five ships, is to preside at courts martial in foreign parts. Commanders in chief shall empower the commanders of a squadron on a separate service, to hold courts martial; but if five or more ships meet in foreign parts, the senior officer is to hold the same. If any thing should occur, which may render it improper for the second officer in command to preside, the third may hold the court martial. The admiralty is likewise empowered to appoint officers in the ports of Great Britain to hold courts martial. The court martial shall not consist of more than thirteen, nor less than five officers; and the officers shall not direct



the particular number. Where there are only three post captains, the president may call in commanders under that rank. No member of the court shall go on shore, after the trial is begun, upon pain of being cashiered, nor shall the proceedings be delayed. The officers composing a court martial are to be sworn to administer justice, according to the articles established by this act, and not to discover the vote or opinion of any member, unless thereto required by act of parliament. The judge advocate is likewise to take this latter part of the oath; and he is to administer an oath to the witnesses. Persons refusing to give evidence, prevaricating, or being guilty of contempt to the court, may be imprisoned for the two first offences for three months, or less, at the discretion of the court; and for the last for one month, or less, in like manner. Perjury, or subornation thereof, shall be punished according to the several acts in force, relative to those crimes. Report is to be made to the admiralty, or commander in chief, before sentence of death, except in cases of mutiny. The articles shall be in force with respect to crews of ships lost or destroyed, and the pay and wages of those who did their duty shall be continued. No person, not flying from justice, shall be tried, unless complaint be made in writing to the admiralty, or a court be ordered within three years, or within one year after the return of the ship or offender. The articles of war for his majesty's navy and ships of war are extended to officers and seamen serving in his majesty's vessels employed in the American lakes. Proceedings of courts martial shall not be delayed by the absence of any members, if enough remain to make a court; but no member shall be absent, except on some extraordinary occasion.

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

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

*Articles of War*, a code of laws made by his majesty, from time to time, for the regulation of his land forces, in pursuance of the several annual acts against mutiny and desertion.

**ARTIFICERS.** Persons contracting with, or endeavouring to persuade any artificer in wool, iron, steel, &c. to go out of this kingdom into a foreign country, and thereof shall be convicted in any of the courts at Westminster, the assizes or quarter sessions, shall be fined, not exceeding 100*l.* and be imprisoned three months, and till the fine is paid.

Artificers going out of his Majesty's dominions to exercise or teach their trades to foreigners, not returning within six months after warning given by the ambassador, envoy, &c. where such artificers are resident, shall be incapable of taking any legacy, or being an executor, &c. be disabled to hold lands by descent, devise, &c. forfeit all their lands, and be deemed aliens. Prosecution must be in twelve months.

A justice of peace, on complaint to him that any person is attempting to draw away any such artificer, or that any artificers are contracting or preparing to go out of his Majesty's dominions, may send his warrant to bring the person before him; and if he by oath, or confession of the party, be found guilty, may bind him over with sureties to the next assizes or general quarter-sessions, where he must give security not to depart the realm. Not giving security in either of the cases, to be imprisoned.

By 23. *Geo.* 2. reciting the stat. of 5 *G.* 1. if after the 24th of June 1750, any person shall contract with, entice, persuade, or endeavour to persuade, or seduce, any manufacturer or artificer in wool, mohair, cotton, or silk, or in any manufactures made of wool, mohair, cotton, or silk, or in any of the said materials mixed with one another, or iron, or any other metal, or any clockmaker, or any other manufacturer, workman, or artificer, or in any other the manufactures of Great Britain or Ireland, of what nature soever, to go out of Great Britain or Ireland, into any foreign country, not belonging to Great Britain, and shall be convicted in the King's Bench, or by indictment at the assizes or general gaol-delivery for the county, where the offence is committed, in the Court of Justiciary, or circuit courts of Scotland, or by indictment or information in the King's Bench in Ireland; the person so convicted, shall, for every artificer or manufacturer so contracted with, enticed, persuaded, or seduced, forfeit 500*l.* and imprisonment for twelve months without bail, and until such forfeiture shall be paid; and for the second conviction forfeit 1000*l.* and to be imprisoned for two years.

Prosecution shall be within twelve months after offence. After the 24th of June, 1750, if any person in Great Britain or Ireland shall upon any pretence load on board of any ship or boat which shall not be bound directly to some port in Great Britain or Ireland, or to some of the dominions of Great Britain, any tools used in preparing the woollen and silk manufactures, or any parcels of such tools, by whatever names called; the person shall not only forfeit all such tools, but also 200*l.* to be recovered by action of debt, bill, plaint, or information.

From the 24th of June, 1750, any officer of the customs in Great Britain, or of the revenue in Ireland, may secure in his Majesty's warehouses all such tools by this Act prohibited, as such officer shall discover to be put on board any ship or boat, which shall not be bound directly to some place in Great Britain or Ireland, or to the dominions of Great Britain, and that every officer who shall secure the said tools shall be indemnified, and they shall, after condemnation, be sold to the best bidder; one moiety to the king, and the other to the officer who shall secure the same.

After the said 24th of June, 1750, if the captain or master of any ship or boat in Great Britain or Ireland shall permit any of the said tools to be put on board his said ship, he shall forfeit 100*l.* to be recovered as aforesaid. And if the ship or boat belong to his Majesty, the captain or master shall forfeit 100*l.* and be cashiered.



If any customer, comptroller, or other officer of the customs in Great Britain, or any officer of the revenue in Ireland, shall take or suffer any entry outward, or shall sign any cocket, warrant, or sufferance, for the shipping any of the said tools, or shall permit the same to be done, contrary to this act, such customer, or other officer of the customs in Great Britain, or of the revenue of Ireland, shall forfeit 100*l.* and his office, and be incapable of employment under his Majesty. One moiety of the forfeitures to his Majesty, the other to the person who shall sue. Action shall be within six months, and the person sued may find common bail, or enter a common appearance, plead the general issue, and give this act in evidence; if a non-suit or a verdict pass against plaintiff, or if upon demurrer judgment be against him, the defendant shall recover treble costs.

**ASSAULT.** Assault is derived from the old Latin word *assultus*, which signifies a leaping on another, and is, when one unlawfully sets upon the person of another, offering to beat him, though he beats him not, or striking at him, though he strikes him not.

Battery is the wrongful beating or wounding of another.

In assault and battery, all are principals, and no accessaries.

1. Justifiable. 2. Not justifiable.

1. Justifiable.—A man may justify the striking another to defend his person from being wounded. He may likewise justify the beating one in defence of his wife or child, as the wife may beat one who would assault the husband; a man may also justify beating one who assaults his father or mother, but not his servant, he hath his action. A servant may likewise justify striking another in defence of his master, &c.

Parents have a natural power over their children until they come of age, and until then they may chastise them: and masters have a civil power over their servants; schoolmasters over their scholars; gaolers over their prisoners, and any person over his kinsman, being lunatic, and attempting to do mischief.

If any person would by force wrongfully take away my goods, whether I have a property in them, or a bare possession only, resistance is justifiable: as likewise in case another endeavour to put you out of possession of lands, &c. And a man may beat one in defence of his freehold, farm, watercourse, or highway.

A constable may justify his laying of hands on any one whom he sees assaulting another.

And when the life of any one is in danger, by beating or otherwise, any person may endeavour to resist, and that by beating him who offereth the violence. But if he who is assaulted may escape with his life, or without being wounded, it is not lawful for him to beat or wound the person of another.

2. Not justifiable.—If two agree to play at any game, and one is hurt, it is no breach of the peace, because it was by consent. But if, after the play ended, one will assault and beat another for any wrong conceived in the play, that is a breach of the peace. Got, a barrister of Gray's Inn, and a justice of the peace of Sussex, was

sent for to an ale-house by Machel and Tully: when he came thither, Tully went out of the room, to prevent any body's coming to assist Got, whom Machel beat so much, that he broke his arm; and for this battery he and Tully were indicted, and found guilty, and Machel was fined 1000*l.* and Tully 500*l.* and both committed for a month without bail, and to find sureties for their good behaviour for seven years.

Maker of an assault, battery, &c. on the body of another, is to be fined.

Servant or workman convicted by two witnesses, before two justices of peace, of maliciously assaulting his master, dame, &c. is to be imprisoned a year, and any other corporal punishment, saving life and member.

And where a man is assaulted, he may bring an information in the Crown Office, or have action at law of trespass and assault.

No assault to thrust one in a great crowd.

By an act of 7 *Geo.* 2. for the more effectual punishment of assaults with intent to commit robbery, it is enacted, that after 1 May, 1734, any person or persons convicted of assaulting others with offensive weapons, and a design to rob, shall be transported for seven years; and such convicts breaking gaol, or unlawfully returning from transportation, shall suffer death.

ASSETS are of two sorts; the one assets by descent, the other assets in hand. Assets by descent are, where a man is bound in an obligation, and dies seised of lands in fee-simple, which descend to his heir, then his lands shall be called assets to pay the same debt; and by that means the heir shall be charged, as far as the land so to him descending will stretch. Assets in hand are, when a man in like manner indebted makes executors, and leaves them sufficient to pay; or some commodity or profit is come unto them in right of the testator; this is called assets in their hands. There is also another division of assets, into legal and equitable assets: legal assets are such as are liable to debts and legacies by the course of law; equitable assets are such as are only liable by the help of a court of equity. So also there are real and personal assets: real assets are such as concern the land; personal are such as concern the personal estate only. If a man devises land to be sold, neither the money arising from such sale, nor the profits of the land for any time to be taken, shall be accounted as any of the goods and chattels of such person deceased. But if a man devises lands to be sold by one for payment of his debts and legacies, and makes the same person his executor, and dies; the money made by such person upon the sale of the land, shall be assets in his hands. But otherwise it is where the land is devised to be sold by the executor and others; for there the money shall not be assets; for they are not trusted with it as executors. But though such is not assets at law, it shall be assets in equity. If there is a mortgage for years, though never so many, this is assets at law. Because the whole interest is not gone from the mortgagor, the reversion in fee being left in him: but if it is a mortgage in fee, it is only assets in equity,



because the legal estate is gone out of the obligor. A jointress holding of lands mortgaged, it was decreed, that she paying the mortgage should hold over till she and her executors were repaid with interest. If a man is seised of an advowson in fee, and the church becomes void, the void turn is a chattel: and if the patron dies before he presents, the advowson does not go to his heir, but to his executor. An advowson in fee has been decreed to be assets in the hands of the heir for payment of debts. And the decree was affirmed in the House of Lords. Assets in Ireland are assets in England: and so it hath been resolved, that if the executor hath goods of the testator in any part of the world, he shall be charged in respect of them. But bonds and specialties are no assets until the money is paid. If an executor recover damages in trespass for goods taken away in the life-time of the testator, this, when recovered, shall be assets; because he recovers it as executor. A debt due from an executor to a testator, is assets in equity to pay legacies. The interest which a master hath in a servant is not assets in the hands of an executor; for a servant whose master is dead is legally discharged, and is not servant either to the heir or executor. But, says Wentworth, meet and honest it is that one of them continue him in service, till a fit time of providing for him a new master; and fit for him not to depart suddenly. Notwithstanding, the interest which one hath in an apprentice, is a chattel personal, and shall go to the executors. A reversion expectant upon an estate for life, is assets in the hands of the heir; but the creditor cannot compel the heir to sell it, but must wait till it falls.

ASSIGNMENT is the assigning and setting over the interest a man hath in a lease, or other thing, to another.

If tenant for years assign his estate, no consideration is necessary, the tenure being subject to payment of rent; but in other cases, some consideration must be given. Lessee for years makes assignment of his term, the lessor having notice and consenting; after the lessee's death, his executors not accountable for rent. And if the executors or administrators of such lessee assign their interest, action of debt may not be brought against them for rent, but against the assignee.

Assignee of lands, if not named in a condition, may pay the money to save his land; but he shall receive no money, if not named. Assignees shall not take advantage of every forfeiture on a condition; only such as are incident to the reversion, as for rent, or for benefit of the estate, as not keeping houses in repair, &c. And covenants for these shall bind them, though not named.

He is an assignee, who hath the whole estate of the assignor. and there is assignee in deed, and in law; in deed, such to whom a lease or estate is assigned by deed; and in law, whom the law makes so, without deed, as an executor is assignee in law to the testator. But if there be assign in deed, assign in law is not allowed. Debts, &c. are said to be assigned; but must be sued for in the name of the assignor.

There is a special signification of the word assign, to set forth

or point at; as to assign error, false judgment, waste, &c. Wherein is shewn where the error is committed, the judgment unjust, &c.

And justices are said to be assigned to take assizes.

**ASSIGNMENTS MADE BY WIDOWS.** If a mother having a right to dower, to encourage a marriage of her son, releases her dower, and the release is shewn to the wife, and her relations, it shall bind the mother, though the lease was obtained by a fraudulent suggestion. A widow before her marriage with a second husband assigning over the greatest part of her estate to trustees, for the benefit of children by her former husband, without the privity of such second husband, has been thought by the court to be a justifiable act, and that she might thus provide for her children before she put herself under the power of a husband. And where it was proved that eight thousand pounds had been thus settled, and that the husband had suppressed the deed, he was directed to pay the whole money without directing any account. But if a widow makes a deed of settlement of her estate, and marries a second husband, who was not privy to such settlement, and it appearing to the court that it was in consideration of her having such estate that the husband married her, the court will set aside such deed as fraudulent.

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

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

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

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

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

A *commission of the peace*, in every county of the circuits; and all justices of the peace of the county are bound to be present at the assises.

**ASSUMPSIT.** An assumpsit is a voluntary promise made by word, or supposed to be made by, whereby a person upon some



## ASSUMPSIT.

valuable consideration, assumeth or undertaketh to perform or pay something to another.

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

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

Of all actions founded upon contract, none is in more general use than the action of assumpsit, which is founded upon contract either expressed or implied by law, and gives the party damages in proportion to the loss he has sustained by the violation of the contract.

There are two sorts of assumpsit. First, a general *indebitatus* assumpsit. Secondly, a special assumpsit.

*Indebitatus assumpsit* will not lie where the debt is due by specialty, for in such case the specialty ought to be declared upon; therefore it is always necessary in this action to shew for what cause the debt grew due; and in case it be not shewed, it will be sufficient reason to arrest judgment, or to reverse it upon a writ of error.

The general causes for which this action may be brought, are either, first, for money lent. Secondly, for money laid out and expended. Thirdly, for money had and received to the plaintiff's use. Fourthly, for a sum certain (*viz.* 10*l.*) for goods sold and delivered. Fifthly, for goods sold *quantum valebant*. Sixthly, for a sum certain for work and labour.—Seventhly, a *quantum meruit* for work and labour. Eighthly, on an account stated.

And the plaintiff's proof ought to tally with some of the counts in the declaration, and therefore if in an action for work and labour and money lent, the evidence were that there had been mutual dealings between the parties, and that they had come to an account, and that the defendant upon the balance was indebted to the plaintiff, (*ex. gr.* 5*l.*) and had promised to pay, the plaintiff ought to be nonsuited, unless there were likewise a count upon an *insimul computasset*.

In assumpsit upon an account stated, proof that the defendant and the plaintiff's wife reckoned that the defendant had borrowed at one time 40*s.* at another time 40*s.* and at another time 4*l.* and that this came to 8*l.* and that he promised to pay it, is good

evidence. And yet in such case no confession of the wife's would be allowed to be given in evidence against the husband.

Upon an *indebitatus* assumpsit against several, a joint debt or contract must be proved; for it is different in contracts from what it is in torts, which are several, and in which one alone may be found guilty.

There must be either an express or implied promise to found this action upon.

If the defendant be under an obligation from ties of natural justice, it implies a debt, and gives this remedy founded upon equity, *quasi ex contractu*; as suppose a recovery on a policy on a ship presumed lost, which afterward appears to be safe. But in assumpsit for goods sold, if the evidence be that the defendant has agreed with the plaintiff's servant to pay him half price, which the servant is to have to his own use, this will not maintain the action, for here arises no contract to the plaintiff; he might as well bring assumpsit against one who steals his goods. But where a factor to one beyond sea buys or sells goods for the person to whom he is factor, an action will lie against or for him in his own name; for the credit will be presumed to be given to him in the first case, and in the last, the promise will be presumed to be made to him, and the rather so, as it is so much for the benefit of trade.

However, the factor's sale does by the general rule of law create a contract between the owner and buyer, and therefore if a factor sell for payment at a future day, if the owner give notice to the buyer to pay him and not the factor, the buyer would not be justified in afterwards paying the factor. Yet perhaps under some particular circumstances this rule may not take place: As where the factor sells the goods at his own risque; (*i. e.* is answerable to the owner for the price, though it be never paid) for in such case he is the debtor to the owner, and not the buyer.

Assumpsit will not lie for money had and received, where the defendant has entered into articles to account, for then the plaintiff has a remedy of a higher nature.

If a sheriff levy money upon a *fi. fa.* the plaintiff or his executors may have *indebitatus* assumpsit for so much money, received to his use.

Where a man pays money on a mistake in an account or where one pays money under or by a mere deceit, he may bring *indebitatus* assumpsit for the money; but where one knowingly pays money upon an illegal consideration, he is *particeps criminis*, and there is no reason he should have his money again, for he parted with it freely, and *volenti non fit injuria*.

So if a debt contracted during infancy be paid, or if money be paid which was fairly won at play: But where the plaintiff has paid money on a consideration not performed, (*ex. gr.* of transferring stock at a day certain) he may either affirm the agreement by a special action on the case for the non-performance, or disaffirm it



by reason of the fraud, and bring an action for money had and received; in which case the jury ought to make the price of the stock at the time it should have been delivered, the measure of the damages. However, he could not in such action recover more than the money he had paid. The law would be the same though the condition were illegal, for not being performed, the defendant is under an obligation from ties of natural justice, to repay the money: Therefore where *A.* gave a custom-house officer money to run goods, the goods being seized, *A.* recovered his money back again.

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

**ATTAINT**, is a writ after judgment, against a jury that have given false verdict in a court of record, in an action real or personal, where the debt or damage amount to above 40s.

Issue found by verdict, is always intended true, till reversed by attain. Attaint lies against a jury that gives verdict contrary to evidence: and judgment may be reversed on attain, where a judge declares the law erroneously, and the jury find accordingly; but the jury may be excused. Attaint lies not for that which was not given in evidence; nor on verdict in waste; or upon inquest of office; and where the king is sole party, and the jury find for him, no attain lies.

If the party for whom the jury found the false verdict die before attain brought, the action is gone. A nonsuit in attain is peremptory; and no *supersedeas* is grantable on attain. If a man recovers in attain, upon verdict in action by which he lost his land, he shall have restitution; so also of damages. Attaints descend to such persons, to whom the land should descend.

Attaints are sued in *B. R.* or *C. B.* but *nisi prius* may be granted: and the defendant's plea is, that he gave true verdict, &c. The grand jury is to try the verdict of the petty jury on the attain. Attaint may be sued in the hustings of London for false verdict in the city courts; and plaintiff have restitution, &c. But if the first verdict be affirmed, the plaintiff is to be imprisoned and fined.

If verdict was found false, the punishment at common law was, that the juror's houses should be broken down, his meadows ploughed up, and lands forfeited: but now a pecuniary penalty is appointed, and fine and ransom at the discretion of the court.

Instead of attain, where verdict is against evidence, it is usual to have a new trial.

**ATTAINDER AND CONVICTION.** A man is properly said to be indicted when the offence is first found by the grand inquest, or other jury of inquiry. Conviction is, where the offender is

found guilty by a second or petty jury, after having pleaded Not guilty, or shall confess the offence upon his trial, or is pronounced outlawed for the same at the county court.

But by divers statutes an offender may be convicted out of court, either upon the view and record of the justices of peace, or by the confession of the offender, or upon examination of witnesses, before one or more justice of peace out of session, or sometimes upon the certificate or presentment of a justice of peace in the sessions, and sometimes by confession or examination of witnesses in court, without any verdict taken.

Attainder is, when after conviction judgment is given against the offender.

These words are used promiscuously, and sometimes one is signified by the other; as by the statute of 3 H. 7. c. 1. it is enacted, That if a man be acquitted of murder upon an indictment, or attainted, an appeal may be brought if the benefit of clergy is not had; the word attainted must signify convicted, because after attainder it is too late to have the benefit of clergy.

After conviction, or *Fugam fecit* returned by the coroner, all the goods, the corn on the ground, the profits of the fee-simple estate for a year and a day, and the issues of intailed lands during life, and all debts due upon any securities, are forfeited to the king; and the party to whom the king shall give the same, may bring his action in his own name to recover them.

A man may be attainted on an outlawry, and convicted in many cases by his own confession, and without a verdict, as generally upon penal laws, viz. A recusant indicted at sessions, and proclamation made for him to surrender himself to the sheriff; if he neglects to appear at the next sessions, the record of his default is a conviction; and so in many other cases

At common law, on *fugam fecit* by a felon returned by the coroner; or if he did not fly, but was indicted, the sheriff or coroner might seize his goods before trial for the use of the king, which ought to be appraised; but then after the appraisement they ought not to be removed out of his house before attainder, if the offender could give security that they should not be embezzled; if not, then they were to be delivered to the neighbours, who ought to keep them during his imprisonment; and he is to have a reasonable maintenance out of them till conviction.

And this is confirmed by stat. 1 R. 2. c. 3. and the party imprisoned shall recover double the value of his goods seized by any officer, or taken out of his house before conviction.

But the offender may sell his goods for his maintenance in prison.

In attainder by outlawry, if it is erroneous, the party may appear at any time, and reverse it by a writ of error.

At common law, it was an error in fact for the party outlawed to be beyond sea at the time of the judgment pronounced upon the exigent; for which the outlawry might be reversed in all cases. But stat. 6 Ed. 6. takes away this advantage in treason; only



there is a proviso, that if the party shall yield himself to the chief justice within a year and a day after the outlawry pronounced, he shall be admitted to traverse the indictment. Sir Thomas Armstrong, after being taken in Holland, and brought over in custody hither, would have had the benefit of this clause, but it was denied him.

One attainted of felony may be arraigned for treason committed before or after the attainder.

One attainted of felony may be sued in an action of debt upon obligation, and execution shall be had.

One attainted and pardoned may sue for a wrong done.

One attainted and pardoned may sue for a wrong done before ; or purchase land.

One attainted upon an appeal of robbery may be arraigned upon an appeal of robbery at another suit.

One attainted of felony, by standing mute, may after be arraigned of another felony.

One attainted of felony cannot after be arraigned for another felony, so long as the first is unpardoned, unless it be in the cases before.

After the attainder, the felon's grant of goods or lands bindeth all persons except the lord to whom they escheat.

Rights of entry (though not of action) given to the king by attainder for treason; so conditions personal, chosen in action, as statutes, recognizances, obligations.

But a condition or proviso inseparably annexed to the person and mind of the party ; as of a proviso, if he shall be reminded to revoke certain uses, and signify his mind in writing, &c. there is not in the king by attainder.

Grant of wine-licence, taken in another's name in trust, forfeited by attainder of felony.

A dignity intailed (the earldom of Westmoreland) forfeited by attainder for treason, being an hereditament at common law.

So of an annuity being of inheritance.

The punishment of persons attainted.

1. Loss of Life. 2. Corruption of blood. 3. Forfeiture of fee simple estates.

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

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

ATTORNEY-GENERAL, a great officer under the king, made by letters patent : whose office is to exhibit informations and prosecutions 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

**ATTORNMENT**, is the consent of the tenant to the grant of the seignior or the reversion, putting him in the possession of services due from such tenant.

By 4 *Ann. c. 16.* all grants and conveyances shall be good without attornment of tenants. By 11 *Geo. 2. c. 19.* attornments of lands made by tenants to strangers shall be void, and the landlord's possession shall not be affected thereby: but this shall not extend to vacate any attornment made pursuant to a judgment at law, or with consent of the landlord, or to a mortgagee after mortgage forfeited.

**AUCTIONEERS.** Every auctioneer, on taking out a licence, must give security for the payment of the auction duties; if in London, himself in 1000*l.* and two sureties in 200*l.* each; and if in the country, himself in 500*l.* and two sureties of 50*l.* each.

Here follow some of the most material duties of an auctioneer.

Auctioneers must be well skilled in their duties; and if their employers sustain any damage through them, an action will lie.

If an auctioneer sells the property of his employer for a less sum than he was instructed to do, he will be obliged to make good the difference. And if he sells his principal's goods at a time or in a mode contrary to his express directions, an action of trover may be maintained against him for a conversion.

If an auctioneer pays over the produce of the sale to his employer, having received notice that the goods were not the property of such employer, the real owner of the goods may recover the amount from the auctioneer.

Auctioneers cannot become the purchasers of property entrusted to them to sell at a less value than its real worth, unless they can prove that the owner of such property was fully acquainted with its value.

A warranty by the auctioneer on a sale of goods made by him pursuant to his authority, will not subject him to answer personally to the purchaser for any breach of the contract or defect as to the soundness, title, or the like, in the article and commodity set up to sale, unless from the terms of the warrantry it should appear that he has pledged his own responsibility: but, to relieve him he must disclose the name of his employer; and this must be done at the time of the sale.

By the statute 29 *Car. 2. c. 3. s. 4.* it is enacted, "that no action shall be brought whereby to charge a defendant upon any contract or sale of lands, tenements, and hereditaments, or any action in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

By the 17th section of the same statute it is further enacted, "that no contract for the sale of any goods, wares, and merchandises, for the price of ten pounds and upwards, shall be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something as earnest to bind the



bargain, or in part of payment, or that some note or memorandum in writing of the same bargain be made and signed by the parties to be charged by such contract, or their agents thereunto unlawfully authorized."

With respect to sales of lands under this statute it was held, in the case of *Stanfield v. Johnson*, that auctioneers are not to be considered as agents of both parties; but in the late case of *Emmerson v. Heelis*, 2 *Taunt.* 38. it has been decided, that they are agents lawfully authorized by both parties, as well for any interest in land as for goods; and that a note or memorandum in writing of the bargain, made and signed by them, will be sufficient to give validity to the contract. The signing of the purchaser's name opposite the article bought has been held a sufficient compliance with the requisites of the statute on the part of the auctioneer.

But if the owner of estates, or other property sold by auction, or any other person on his behalf, buy in the same without fraud or collusion, no auction duty will become payable, provided notice be given in writing to the auctioneer before such bidding, signed by the owner and the person intended to be the bidder, of the latter being appointed by the former, and having agreed accordingly to bid at the sale for his use; and provided the delivery of such notice be verified by the oath of the auctioneer, as also the fairness of the transaction, to the best of his knowledge. And to exempt a vendor from the payment of the duty, every notice must, at the time appointed by law for the auctioneer's passing his account of the sale, be produced by the auctioneer to the officer authorized to pass the account of such sale, and also be left with the officer.

Any thing which is in the nature of a bidding is within the act; and therefore where the owner put the price under a candlestick in the room (which is called dumb bidding), and it was agreed that no bidding should avail if not equal to that, it was held to be within the acts, as being in effect an actual bidding of so much, for the purpose of superseding smaller biddings at the auction.

But to bring a bidding within the acts, the sum must be named by the party *eo intuitu*, with a view to the purchase of the estate. Therefore in the case of *Cruso v. Crisp*, it was decided, that putting up an estate in lots at certain prices was not a bidding within the acts; and, consequently, where the owner intends only to put up the estate at a certain price, and not to bid for it in case of an advance, no previous notice of his intention need be given.

If an estate, &c. be bought in by the owner, and proper notices were not given of his intention to bid, the duty must be paid, however fair the transaction may be.

A statement by an auctioneer to the vendor or his agent, that he has done what is necessary to avoid payment of the duty, will amount to a warranty, although the duty becomes payable, not by the default, but by the ignorance or mistake of the auctioneer

In the sale of an estate, &c. if the vendor's title prové bad, the auction duty will be allowed, provided, a complaint thereof be made before the commissioners of excise, or two justices of the peace, within whose jurisdiction such sale was made, within twelve calendar months after the sale, if the same shall be rendered void in that time; or otherwise, within three months after the discovery that the owner has no title. But the commissioners will not allow the duty, unless they think that the vendor has used his utmost exertions to make a good title. An appeal, however, lies from the judgment of the commissioners; but as the king never pays costs, they fall upon the vendor.

Although the duty is by the acts imposed on the vendor, yet he is not restrained from making it a condition of sale, that the duty, or any certain portion thereof, shall be paid by the purchaser over and above the price bid at the sale by auction; and in such case, the auctioneer is required to demand payment of the duty from the purchaser, or such portion thereof as is payable by him under the conditions; and, upon neglect or refusal to pay the same, such bidding is declared by the acts to be null and void to all intents and purposes.

If an auctioneer sells an estate without a sufficient authority, so that the purchaser cannot obtain the benefit of his bargain, he, the auctioneer, will be compelled to pay all the costs which the purchaser may have been put to, and to the interest of the purchase-money, if it has been unproductive.

If an auctioneer give credit to the vendee, or take a bill or other security, for the purchase-money, it is entirely at his own risk, and the vendor can compel him to pay the money.

The auctioneer should not part with the deposit until the sale is carried into effect, because he is considered as a stake-holder or depository of it; and, therefore, an action will lie against him for recovery thereof, if the purchaser be entitled to recover it.

Unless an auctioneer disclose the name of his principal, an action will lie against him for damages for breach of the contract.

And if any money is paid as a deposit, though short of the sum stipulated by the conditions, and accepted as such by the auctioneer, it will bind the bargain *quoad* the auctioneer.

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

AUDITA QUERELA, this is a writ that lies where a man has any thing to plead, but hath not a day in court to plead it.

It is usually where one is bound in a statute merchant, &c. or judgment is given against him for debt, and his body in execution, upon suggestion of just cause why execution should not be granted; as a release, &c.

But it cannot be brought on a release, until judgment entered on record. If tenant in tail acknowledge a statute and die, and the counsée sues execution against the issue, the issue may avoid



it in *assise* without *audita querela*. And the conusor, or his heir, may have *audita querela* before execution sued; but a stranger to the statute or purchaser of the land, shall not have it before execution had against him.

To writs of execution, the defendant cannot plead; but if he hath any matter since the judgment to discharge him of an execution, he is to have *audita querela* for relief. Where an *audita querela* is grounded upon a deed, or the party is in prison, process on it is to be *scire facias*; but where not grounded upon a deed, *venire facias*, *distringas*, &c. In cases of deeds, *scire facias ad cognoscendum scriptum* hath the same benefit as *audita querela*.

If land is extend on a statute before the time, *audita querela* lies; and if a man be nonsuit in *audita querela*, he may have a new writ. A *supersedeas* will not be allowed until deed proved, &c. bail put in by allowance of the court.

If a writ *audita querela* be brought to discharge a man of an execution, a release of actions personal is a good bar.

AUTHORITY, is a delegated power, by which one person authorizes another to act generally, or especially in his name; and by whose acts, where the authority is strictly pursued, the party delegating such power, will be bound. An authority may be given either verbally or in writing, but the latter the most usual. Where one person is delegated to act for another, he must not use his own name only, but the name also of the person who gave the authority. Every authority shall be countermandable, and determined by the death of him who gives it: but where an interest is coupled with an authority, there it can neither be countermanded nor determined.

AVERMENT, is an offer of the defendant to make good or justify his plea in abatement, or in bar: and is the act, as well as the offer. The use of it is to ascertain to the court, what is doubtfully alleged.

It is general, or particular; general averment, concludes every plea in bar, &c. and contains matter affirmative: particular averment, is when tenant for life, or in tail, &c. is averred.

It is not to be made against a record; nor against the condition of a bond, which being made before witnesses, is not to be contradicted by bare averment: where an heir is sued on the ancestor's bond, it must be averred that the obligor was bound. Averment not admitted, against a will concerning lands, which ought to be in writing. And there needs no averment of performance of promise, against a promise; each party hath action. But where one thing is to be done in consideration of another, performance of promise must be averred.

Pleas merely in the negative are not to be averred; nor what is apparent to the court; or against presumption of law; as where rent is behind many years, and the lord makes acquittance for the last due, which presumes the whole is paid, &c.

Another consideration than mentioned in a deed, not contrary

to the deed, may be averred. Nonage in some cases is to be averred: and want of averment *hoc paratus*, &c. is helped by statute.

AVOWRY, is where one takes a distress for rent, &c. and a replevin is issued: the taker shall justify for what cause he took it, and avow the taking, if in his own right; and if for another, make cognizance of the taking, as bailiff or servant, &c.

It is in nature of a declaration, and must contain sufficient matter for judgment to have return: but the avowment is not driven to allege seisin, within the time of the statute of limitations. A lord need not avow on any person in certain; but must allege seisin by the hands of his tenants in certain: where commencement of the rent appears, seisin is not material. The defendant is not obliged to aver his avowry with an *hoc paratus est verificare*. If my tenant is disseised, he may compel me to avow; and so may his heir: where there is tenant for life, remainder in fee; tenant for life may compel the lord to avow upon him. But if there be tenant in tail, remainder in fee; and tenant in tail make a feoffment, the feoffee shall not compel the lord to avow upon him.

One avowry may be upon two several titles of land; though it be but for one rent. And avowry may be made for damage-feasant, &c.

On replevin sued, avowry to be by the lord upon the land, for rents, &c. without naming the tenant; and if found for the defendant, he shall recover such costs and damages, as the plaintiff should have had, if he recovered.

Writs to be granted, to enquire of the sum or duty in arrear, where the plaintiff is nonsuited, before issue, in replevin; the defendant suggesting in nature of avowry for rent.

AWARD, is the determination made by arbitrators or an umpire as the case may require.—“Every award should be consistent with the terms of the submission; the whole authority of the arbitrators being derived from thence. Therefore, 1. the award must not extend to any matter not comprehended in the submission: thus, if the submission be confined to a particular subject of dispute, while there are other things in controversy between the parties, an award which extends to any of these other things is void as far as it respects them.

“If the reference be ‘of all matters in dispute in the cause between the parties,’ the power of the arbitrator is confined solely to the matters in dispute in that suit. If it be ‘of all matters in difference between the parties in the suit,’ his power is not confined to the subject of that particular cause, but extends to every matter in dispute between them.

2. “The award should not extend to any one who is a stranger (that is, not a party) to the submission. Thus, if two submit to arbitration concerning the title to certain lands, and the arbitrators award that all controversies touching the lands shall cease; and that one of the parties, his wife and son, or his heir apparent, by his



procurement, shall make to the other such assurance of the land as the other shall require, this is void; because the wife and son are strangers to the submission.

3. "The award ought not to be of part only of the things submitted. This, however, must be understood with a considerable degree of limitation; for though the words of the submission be more comprehensive than those of the award, yet if it do not appear that any thing else was in dispute between the parties, besides what is comprehended in the award, it may be good.

"If a submission be 'of all premises or of any part of them,' in this case the arbitrator may undoubtedly make an award of part only.

"Where the submission is general 'of all matters in difference' between the parties, though there should happen to be many subjects of controversy between them, if only one be signified to the arbitrator, he may make his award of that; he is, in the language of Lord Coke, in the place of a judge, and his office is to determine according to what is alleged and proved. It is the business of the parties grieved, who know their own particular grievances, to signify their causes of controversy to their arbitrator; for he is a stranger, and cannot know any thing of their disputes but what is laid before him.

"In case of such a general submission, if an award concerning one thing only be made, it shall be presumed (till the contrary be shown by the party objecting) that nothing else was referred. But the arbitrators ought to decide on all matters laid before them; or they cannot do complete justice.

"It is, however, no valid objection to an award, that the arbitrator had notice of a certain demand, and that he made no award of that, if in other respects the award be good; as, though the sum in question may not be mentioned in the award, the arbitrator may have shown his opinion that the demand was unfounded.

4. "If an award be to do any thing which is against law, it is void, and the parties are not bound to perform it. So also is an award of a thing which is not physically or morally possible, or in the power of the party to perform, as that he shall deliver up a deed which is in the power and custody of a person over whom he has no controul. And an award, that the defendant shall be bound with sureties such as the plaintiff shall approve, is void; for it may be impossible to force the approbation of the plaintiff. But in this case the party should enter into a bond, and tender it to the plaintiff.

"Where an award is, that one of the parties shall procure a stranger to do a thing, there is a distinction taken between the case where he has no power over the stranger to compel him, and where he has power either by the common law or by bill in equity. In the former case, the award is void, for so much as concerns the stranger. In the latter it is good.

"Neither must an award be to do a thing unreasonable, nor by the performance of which the party awarded to do the acts may subject himself to an action from another.

5. "The award must be certain and final. As the intention of the parties in submitting their disputes to arbitration is to have something ascertained which was uncertain before, it is a positive rule, that the award ought to be plainly expressed, that the parties may certainly know what it is they are ordered to do.

"On the construction of certainty and uncertainty the cases are multifarious; and it may be observed, that they principally depend on such circumstances as are peculiar to each case, and very seldom form any general precedent. The rule, therefore, serves better to regulate the conduct of arbitrators, than the numerous exceptions: as it is the interest of the party against whom the award is made to be ingenious in finding out objections, an award cannot be too particular or precise in laying down what is to be done by the parties, and the manner, time, and place of their doing it. For though the two latter have been deemed immaterial, yet it is safer to specify them.

"Awards are now so liberally construed, that trifling objections are not suffered to prevail against the manifest intent of the parties. In favour of the equitable jurisdiction of the arbitrators, if that to which the objection of uncertainty is made can be ascertained, either by the context of the award, or from the nature of, and circumstances attendant on, the thing awarded, or by a manifest reference to something connected with it, the objection shall not prevail. Where there is no date to be awarded, it shall be taken as from the day of the delivery, which may be ascertained by averment, and all other uncertainties may be helped by proper averments in pleading.

"As an award must be certain, so, in order to prevent any future litigation on the subject of the submission, it must also be final.

"On this principle, an award that each party shall be nonsuited in the action which he has brought against the other is not good, because (amongst other reasons) a non-suit does not bar them from bringing a new action: but an award that a party shall discontinue his action, or enter a *retraxit*, is good.

"An award, 'that all suits shall cease,' or 'that a bill in chancery shall be dismissed, or 'that a party shall not commence or prosecute a suit,' is final: for it shall be taken to mean that the debt and action shall cease for ever.

"Lastly, the award must be mutual, not giving an advantage to one party without an equivalent to the other.

"The principal requisite, however, to form that mutuality, about which so much is said in all the cases usually classed under this rule, is nothing more than that the thing awarded to be done should be a final discharge and satisfaction of all debts and claims by the party in whose favour the award is made, against the other, for the matters submitted; and therefore the present rule amounts to nothing more than a different form of expression of that which requires that an award should be final.

6. "The rules that at present govern the construction of awards are, that they shall be interpreted as deeds, according to the inter-



tion of the arbitrators ; that they shall not be taken strictly, but literally, according to the intent of the parties submitting, and according to the power given to the arbitrators ; that all actions mentioned in the award shall be construed to mean, all actions over which the arbitrators have power by the submission ; that if there be any contradiction in the words of an award, so that the one point cannot stand consistently with the other, the first part shall stand, and the latter be rejected ; but that if the latter be only an explanation of the former, both parts shall stand ; and that where the words of an award have any ambiguity in them, they are always to be construed in such a manner as to give effect to the award.

“ Much unnecessary difficulty occurs in all the old reports on the construction that ought to be put on the award of a release ; but it is now clearly settled, that an award of releases up to the time of making the award is not altogether void, but that it shall be construed so as to support the award ; and that for two reasons. 1st. That it shall be presumed that no difference has arisen since the time of the submission, unless it be specially shewn that there has. 2d. That a release to the time of the submission is a good performance of an award, ordering a release to the time of the award ; not because the meaning of the arbitration is so, but because their meaning must be controuled so far as it is void by construction of law.

“ Formerly if one part of an award was void, the whole was considered so. however, it is the rule of the courts in many cases to enforce the performance of that, which, had it stood by itself, would have been good, notwithstanding another part might have been bad ; but if that part of the award which is void be so connected with the rest as to affect the justice of the case between the parties, the award is void for the whole.

“ When, from the tenor of the award, it appears that the arbitrator intended that his award should be mutual, according something in favour of one of the parties—as an equivalent for what he has awarded in favour of the other ; if then that which is awarded on one side be void, so that performance of it cannot be enforced, the award is void for the whole, because that mutuality which the arbitrator intended cannot be preserved.

“ If one entire act awarded to be done on one side comprehend several things, for some of which it would be good, and for others bad, the award is bad for the whole, because the act cannot be avoided.

“ When it appears clearly, that both parties have the full effect of what was intended them by the arbitrator, though something be awarded which was void, yet the award shall stand for the rest.

“ An award ought regularly to be made in writing, signed and sealed by the arbitrators, and the execution properly witnessed ; it may, however, be made by parol, if it is so expressly provided in the submission.

7. "It is not in all cases absolutely necessary, that performance should be exactly according to the words of the award; if it be substantively and effectually the same it is sufficient. And if the party in whose favour the award is made accept of a performance different in circumstances from the exact letter of the award, that is sufficient; for *consensus tollet errorem*.

"Where the concurrence and presence of both parties are not absolutely necessary to the performance, each ought to perform his part without request from the other.

"A considerable number of years having elapsed since the making of the award, is no objection to the parties being called upon to perform it; nor can the statute of limitations, be pleaded in bar.

"An award in writing, and under seal, need not have a deed stamp, unless delivered as a deed; but being only delivered as an award, it is sufficient if it have the award stamp of 10s."

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

Bail, in civil cases, is either common or special. Common bail is a matter of course, being nothing but a mere form upon appearance, after personal service of the writ, and notice to appear upon the defendant. If he appear thereto, his attorney puts in imaginary sureties for his future attendance, as John Doe and Richard Roe. But if the plaintiff will make affidavit, that the cause of action amounts to 10*l.* or upwards, in order to arrest the defendant, and make him put in substantial sureties, for his appearance, called special bail; it is then required that the true cause of action be expressed in the body of the writ, or process.

Special bail, are two or more persons, who, after the arrest, undertake generally, or enter into bond to the sheriff in a certain sum, to insure the defendant's appearance at the return of the writ: this obligation is called the bail bond. No person shall be held to special bail, where the cause of action is under 15*l.* except in certain cases, which have been already specified in article Arrest.

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



*municato capiendo.* To refuse bail, when any person is bailable, is an offence punishable by fine. So likewise, if any one is admitted to bail who ought not by law to be admitted; or if slender bail be taken.

BAILIFF is a servant of the law to the sheriff of the county, to execute writs, &c.

The bailiff's arrest, is the arrest of the sheriff; and if he suffer a prisoner to escape, action lies against the sheriff: also if a prisoner is rescued, it shall be adjudged done to the sheriff. And the sheriff is to answer for misdemeanors of his bailiffs; but he may have remedy over against them.

All persons are bound by the common law, not only to assist sheriffs, but their bailiffs in executing the king's writs. But formerly bailiffs of hundreds, were the officers to execute writs, &c. though now done by special bailiffs, put in with them by the sheriff.

A bailiff may execute a writ out of the hundred; for he is bailiff all the county over, if a sheriff's bailiff. But a sheriff's bailiff is not an officer of the court; only the sheriff himself: the bailiff of a liberty, such an officer as the court will take notice of.

The court of *B. R.* will punish a bailiff that misbehaves himself, in executing the process of the court. And no bailiff, &c. shall take from any person in custody any warrant to acknowledge a judgment, but in presence of some attorney for the defendant, on pain of being severely punished. A warrant of a person arrested to confess judgment taken in presence of a solicitor, or attorney's clerk, hath been adjudged void.

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

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

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

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

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

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

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

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

Robbery by force is considered as irresistible; but a loss by private stealth, is presumptive evidence, or ordinary neglect.

Gross neglect is a violation of good faith.

No action lies to compel performance of a naked contract.

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

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

**BANISHMENT** is a civil death inflicted on an offender for some crime.

In case of the husband's banishment, a feme covert may act as the husband might, if not dead in law: the wife is disabled to bring any action without her husband, except when he is banished by statute.

By the habeas corpus act, 31 Ch. 2. c. 2. no subject of this realm, who is an inhabitant of England, Wales, or Berwick, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, or place beyond the seas, where they cannot have the protection of the common law; for by it, every Englishman may claim a right to abide in his own country so long as he pleases, and not be banished or driven from it, but by sentence of the law. See *Transportation*.

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

The Bank of England is under various regulations, sanctioned by parliament, for its internal government, &c. too numerous to be here stated. Persons forging, altering, or uttering as true when forged, bank notes, bank-bills of exchange, dividend-warrants, or any bond or obligation under the common seal of the bank of England, or any indorsment thereon, or who shall offer or dispose of or put away the same, or shall demand the money therein contained, or any part thereof of the said company, any their officers or servants knowingly to defraud the said company or their successors, or any other person or persons, body or bodies politic or corporate whatsoever;—every person so offending shall suffer death without benefit of clergy.

**BANK NOTES**, a legal tender. By the 51 Geo. 3. c. 127, after the 24th of July, 1811, no person shall receive or pay, for



any gold coin, lawfully current, more than the true lawful value thereof, whether such value be paid or taken in lawful money, or in any Bank of England notes or bills, or tokens, or by any or all of the said means, wholly or partially, or by any other means, device, shift, or contrivance whatsoever: and every person offending herein shall be guilty of a misdemeanour. No person shall, by any means or contrivance whatsoever, receive or pass any Bank of England note for less than the amount of lawful money expressed therein, except only lawful discount on such note or bill as shall not be expressed to be payable on demand; and every person offending herein shall be guilty of a misdemeanour.

**BANKERS' NOTES AND CHECKS.** Bankers' cash-notes, or goldsmiths notes, as they were formerly called, are promissory notes payable to order or bearer on demand, and are transferable by delivery. They may, however, be negotiated by indorsement, in which case the act of indorsing will operate as the making a bill of exchange. On account of their being payable on demand, they are considered as cash, whether payable to order or bearer: but if presented in due time, and dishonoured, they will not amount to payment. At present cash notes are seldom made, except by country bankers, their use having been superseded by the introduction of checks.

A check or draft is as negotiable as a bill of exchange. In case of default of payment by the drawee, the assignee may maintain an action against the assignor, on the consideration of transfer; unless it was expressly agreed at the time of the transfer, that the assignee should take the instrument assigned as payment, and run the risk of its being paid, or that he has not used due diligence: in which cases it will amount to payment; and, in the event of the failure of the banker, the assignor, and every other party to the check, will be discharged.

As to the precise time when a check should be presented for payment, there is some degree of uncertainty. It may, however, be collected from the cases, that a check on a banker, or a cash note, &c. payable on demand, ought, if given in the place where it is payable, to be presented for payment the same day it is received, or, at farthest, early in the next morning, unless prevented by distance, or some inevitable cause or accident, which in all cases will excuse the neglect to make a presentment so soon as would otherwise be necessary. But, in point of law, there is no other settled rule than that the presentment must be made within a reasonable time, which, as observed by Lord Ellenborough, must be accommodated to other business and affairs of life; and the party is not bound to neglect every other transaction, in order to present the check on the same day he receives it.

When the check, &c. is due on demand, and not payable at the place where received, it is said, that it should be forwarded for payment by the next post after it was received.

Payment of a check or draft before it is due is contrary to the usual course of business; and therefore when a banker paid a check

the day before it bore date, which had been lost by the payee, he was liable to repay the amount to the loser.

When payment is made by the drawee giving a draft on a banker, it is not advisable to give up the bill until the draft is paid.

If the holder of a draft on a banker receives payment thereof in the banker's notes instead of cash, and the banker fails, the drawer of the check will be discharged.

**BANKRUPT.** An act of bankruptcy, being mentioned as a crime in the old statutes, must evidently be considered as of a local nature, and confined within the same limits as the peculiar law which has given rise to it. No act therefore done out of England can be an act of bankruptcy, whether the trader be a native or a foreigner. A deed which might be an act of bankruptcy, if executed here, is not so if executed in India. A fraudulent outlawry, suffered in Ireland, does not make one a bankrupt here; but in any part of the territory of England, though under a peculiar jurisdiction, it does; as in the county palatine of Durham.

The various acts of bankruptcy within the several statutes, brought together into one view, seem to be the following: Every person shall be a bankrupt, who, using the trade of merchandize, by way of bargaining, exchange, bartery, or chevisnce, or other wise, in gross or by retail, or seeking his trade of living by buying and selling, or that shall use the trade or profession of a scrivener, receiving other men's monies or effects into his trust or custody, shall,

1. Depart the realm.
2. Begin to keep house.
3. Depart from his dwelling-house, or otherwise absent himself.
4. Suffer himself to be outlawed.
5. Willingly or fraudulently procure his goods, money, or chattels, to be attached or sequestered.
6. Willingly or fraudulently suffer himself to be arrested, or yielding himself to prison.
7. Being arrested for debt, shall lie in prison two months or more upon that or any other arrest or detention for debt—and he shall be deemed a bankrupt from the time of his first arrest
8. Procure or obtain any protection, other than such person as shall be lawfully protected by privilege of parliament.
9. Make or cause to be made any fraudulent grant or conveyance, of his lands, tenements, goods, or chattels.
10. After the issuing of a commission against him, pay to the petitioning creditor, or deliver to him goods, or other satisfaction or security for his debt, whereby he shall privately have more in the pound than the other creditors.
11. Neglect to make satisfaction for any just debt to the amount of 100*l.* within two months after personal service of summons for such debt, upon any trader having privilege of parliament.

1. *Depart the realm.*—By departing from the realm, a man with-



draws himself from the jurisdiction and coercion of the law, in order to defraud his creditors.

But this must be done with intent to defraud or delay creditors; for where it appears that the party had no such intention, though his creditors are thereby delayed, it is said not to be a departure within the meaning of the statute.

If a merchant departs the realm with the consent of his creditors, he does not thereby commit an act of bankruptcy.

II. *Begin to keep house.*—A trader keeping in his own house privately, so as not to be seen or spoken with by his creditors, except for just or necessary cause, is construed to be an intention to defraud his creditors, by avoiding the process of the law.

But as the statute requires it to be with an intent to delay or defraud creditors, the mere denial is therefore capable of being explained by circumstances; such as sickness, company, business, or even the lateness of the hour.

If a trader orders himself to be denied, circumstances may shew that he did not do it to avoid payment, but on account of sickness, or particular business.

Lord Chancellor Hardwicke declared, that a person's denying himself to a creditor at eleven o'clock at night, was not an act of bankruptcy; for it could not be said to be done with an intent to defraud his creditors, which is an ingredient the statutes require to make a man a bankrupt.

Neither will an order by the debtor to his servant to deny him to creditors, be sufficient without an actual denial; for where a trader gave orders to his servant to deny him to creditors on the 26th of May, but was not actually denied to the creditor till the 28th, the court held the actual denial, and not the order to deny, constituted the act of bankruptcy.

If a tradesman conceals himself, or absconds within his house, with intent to delay or defraud his creditors, it makes him a bankrupt, though the concealment be only for a short time, notwithstanding the party afterwards goes abroad, and appears in public.

If a man denies himself knowing that a creditor comes for a debt, he has committed an act of bankruptcy.

A general denial will not be sufficient: it must be a denial to a creditor having a debt demandable at the time: a denial, therefore, to a creditor by note payable at a future day is no act of bankruptcy.

If a man commits a plain act of bankruptcy, as keeping house, &c. though he afterwards goes abroad, and is a great dealer, yet that will not purge the first act of bankruptcy.

No act of bankruptcy can be purged but by obtaining a certificate.

Keeping house to avoid an attachment for not delivery of goods, no debt being due, is not an act of bankruptcy.

But otherwise for fear of an attachment in chancery.

III. *Depart from his dwelling-house, or otherwise absent himself.*—This is an act of bankruptcy, if done with an intent to defraud or

delay creditors, and his absence but for a single day will be an act of bankruptcy; though the mere departure is sufficient *prima facie* evidence of an intention to defraud or delay his creditors; but it must be a voluntary absention, and not compulsory, as in the case of being arrested.

A voluntary departure for ever so short a time, is sufficient, if done clearly with intent to delay creditors; as where a person left town to avoid an arrest, for the purpose of gaining the term, and returned the next day.

Keeping house to avoid performing a duty merely, will not be an act of bankruptcy, nor a departure from the house on the like occasion; it is the absention to avoid or delay the payment of money which marks the insolvency, and therefore becomes an act of bankruptcy.

A departure from the house is an act of bankruptcy, if done to avoid an attachment to compel the payment of money upon an award, but not an attachment for not delivering goods.

If a man, having no constant dwelling, absents himself from his usual abode, he will be adjudged bankrupt.

IV. *Suffer himself to be outlawed.*—An outlawry in Ireland does not make a man a bankrupt; but it does in the county palatine of Durham.

V. *Willingly or fraudulently procure his goods, money, or chattels, to be attached or sequestered.*—This is a direct endeavour to disappoint his creditors of their security. But to make this an act of bankruptcy, it must be by the procurement of the party, with an intent to delay creditors. An adverse attachment or sequestration, upon the default or laches of the party, is not within the statute; as where a merchant having an impropriate rectory, the tithes were sequestered for not repairing the chancel.

The attachment here meant, and which the legislature had in view, is that sort of attachment only by which suits are commenced; as in London, Bristol, and other places, where that species of process is used.

Therefore a fraudulent judgment, and execution sued thereupon, was not held to be procuring goods to be attached within the words of this act. And the case of the sequestration of tithes, cited above, seems out of the statute also upon this ground.

VI. *Willingly or fraudulently suffer himself to be arrested, or yielding himself to prison.*—If a man shall suffer himself to be arrested without a just and lawful cause, such a proceeding will be deemed an attempt to defraud his creditors.

Or if he causes a voluntary or feigned action to be commenced against him, at the suit of a friendly plaintiff, in order to be turned over from one prison to another; for this being mere form, the bail never justify.

Yielding himself to prison is to be intended a voluntary yielding for debt; and if a person capable of paying will, notwithstanding, from fraudulent motives, voluntarily go to prison, it is an act of bankruptcy.



So, where the party procures himself to be arrested upon a sham or pretended debt, that, by the statute of Elizabeth, is immediately an act of bankruptcy.

VII. *Being arrested for debt, shall lie in prison two months or more, upon that or any other arrest or detention for debt—And he shall be deemed a bankrupt from the time of his first arrest,—*But the arrest must be lawful, and therefore an arrest by an executor before probate is not within the act.

The inability of a trader to procure bail, in order to obtain his liberty, argues a strong deficiency in his credit, owing either to suspected poverty or ill character; and this neglecting to do it, if able, can arise only from a fraudulent intention: in either of which cases it is time his creditors should compel a distribution of his effects.

If a trader owes twenty (or ten) pounds, and be arrested for it, and lie in prison two months, this makes him bankrupt.

Lord Hardwicke said, that the word months, in an act of parliament, means lunar.

The statute does not make the mere being arrested an act of bankruptcy. The most substantial trader is liable to be arrested; but the presumption of insolvency arises from his lying in prison two months, without being able to get bail.

The two months are computed from the time of the first arrest only where the party lies in prison immediately upon the arrest. Where the bail is fairly put in, and the party at a future day surrenders in discharge of his bail, the two months are computed from the time of surrender.

It must be for an actual debt at law, and on which the party is suable at the time. Lying in prison two months on an arrest upon a bond before the day of payment, in order to oblige the party to find sureties according to the custom of London, seems not to be an act of bankruptcy; for in that case no debt is actually then due.

Where a party arrested and in prison at the suit of one plaintiff is detained at the suit of another, and lies two months at the suit of the second, though discharged with respect to the first, this is equally within the statute; the words of the act being, "If he shall lie in prison two months, or more, upon that or any other arrest, or detention for debt," &c.

VIII. *Procure or obtain any protection, other than such person as shall be lawfully protected by privilege of parliament.—*By the 7 Ann. c. 12. s. 5. no merchant or trader within the description of the statute against bankrupts, who shall put himself into the service of an ambassador, or public minister, shall have any privilege by that act.

A person's procuring himself the protection of an ambassador, or public minister, is an act of bankruptcy within the 21 Jac. 1. as it defeats or delays creditors, or tends so to do.

A trader procuring any protection, not being himself privileged by parliament, in order to screen his person from arrests, has shewed an endeavour to elude the justice of the law.

But if any one be protected as the king's servant, it does not make him bankrupt.

The protections which seem to have been the objects of this law, namely, to stay the suits of creditors, have been long disused; the last protection of this kind mentioned in our books being upwards of a century ago.

IX. *Make or cause to be made any fraudulent grant or conveyance of lands, tenements, goods, or chattels.*—A fraudulent grant, to come within the meaning of this statute, must be by deed; therefore a fraudulent sale of goods, not by deed, is no act of bankruptcy in itself; but being a scheme concerted at the eve of a bankruptcy, to cheat innocent persons, in order to secure particular creditors, is such a fraud as shall render the sale void.

A fraudulent disposition of property by mere delivery or otherwise, not by deed, though it may be void against creditors, is not an act of bankruptcy in itself: and a fraudulent deed will be an act of bankruptcy, though on account of the fraud it is void, and without operation in other respects.

The great objects of these laws are to take from the trader the management and disposal of his property, and to distribute it as equally as possible among his general creditors. Any disposition of this property, therefore, whether of the whole or any part of it, made with a view to defeat those objects, is considered as a fraud upon the bankrupt laws; and as such, if it be by deed, is held to be an act of bankruptcy within the statute of 1 Jac. I. P. W. 251.

Whether a transaction be fair or fraudulent is often a question of law; it is the judgment of law upon facts and intents: it must always depend upon the particular circumstances, either separately or combined, in each case, from which the fraudulent intent of the party is to be inferred; and therefore it is difficult to lay down any precise rules. Valid transactions, as between the parties, may be fraudulent by reason of covin, collusion, or confederacy to injure third persons.

If a trader makes a conveyance of his whole substance to a particular creditor, himself continuing in possession, and acting as visible owner, even if such conveyance be made by way of security, and for valuable consideration, it is fraudulent, and a specific act of bankruptcy. This was adjudged in the case of *Wilson v. Day*, before Lord Mansfield, who said, if a bankrupt assigns all his effects, the very deed is an act of bankruptcy itself, as it defeats the whole bankrupt law, and leaves nothing for the creditors.

A trader in declining circumstances, desirous of preferring some particular creditors, made a bill of sale to them, at midnight, of all his good and stock in trade, including even his sign and signiron; but excepting out of it a few particulars, of about 100*l.* value; and absconded the next morning. This was considered a conveyance of all, the interest omitted being so minute.

A mortgage (among other things) of all the stock in trade, ex-



cepting some trifling debts, &c. held to be an act of bankruptcy; as being an assignment of all the stock in trade, without which he could carry on no business.

If a trader execute a bill of sale of all his stock and effects to pay certain creditors, the overplus, if any, to be accounted for to himself, this is an act of bankruptcy. Such preference would defeat the management of the bankrupt's estate, and an equal distribution among his creditors. The law gives the management to persons chosen by the creditors, under the direction of commissioners, and the controul of the great seal. An equal distribution among creditors, who equally gave a general personal credit to the bankrupt, has been anxiously provided for, ever since the statute 21 Jac. c. 19.

A colourable exception of a small part of the estate or effects will not avail to take the case out of the general rule.

An assignment of only part of a trader's effects to a fair creditor, will, if done in contemplation of bankruptcy, become the very act. An assignment by deed of a lease, part of a bankrupt's estate, in contemplation of an act of bankruptcy, is itself an act of bankruptcy. So it is, though such an assignment is only one third of his stock. A partial assignment of only part of a trader's stock, and though by way of security, if done in contemplation of a bankruptcy, is void.

A conveyance of all, though for the payment of creditors generally, is fraudulent, and an act of bankruptcy, if any one creditor is excluded; or to pay all creditors rateably, unless all the creditors assent.

Where an insolvent trader, of his own voluntary act, not being arrested, or threatened with an arrest, nor even called upon for the money, assigned a third part of his effects to his brother, in consideration of money advanced from motives of friendship, and in two days after absconded. This, although possession was delivered instantly, and several acts of ownerships exercised *bona fide* by the brother, who had no knowledge or suspicion of the trader being insolvent, was held clearly an act of bankruptcy, being a voluntary preference given in immediate contemplation of it.

So, of an assignment of part of the real and personal estate of a trader, only three days before he absconded, to his son, who was creditor for more than the value of the estates.

A trader, however, before he becomes a bankrupt, may prefer one creditor to another, and may pay him his debt, or make him a mortgage, with possession delivered.

So the assignment of several debts mentioned in a schedule annexed to the assignment, to indemnify the sureties of the assignor, was held good, he not being a bankrupt till a month afterwards, and at the time not having his bankruptcy in contemplation.

X. *After the issuing of a commission against him, pay to the petitioning creditor, or deliver to him goods, or other satisfaction or security for his debt, whereby he shall privately have more in the*

*pound than the other creditors.*—This act of bankruptcy is best explained in the preamble of the clause of the statute 5 G. 2. c. 30. s. 24, in the following words: “Whereas commissions of bankrupt are frequently taken out by persons, who by means of such commissions (on a composition proposed by the bankrupt), and on a promise not to execute the same, prevail with and extort from the bankrupt their whole debts, or much greater part thereof, than such bankrupts pay to their (other) creditors, or otherwise get from such bankrupts, goods, or other real or personal security; which is contrary to the true intent and meaning of the several statutes made concerning bankrupts; which said statutes intend, that all such bankrupts’ creditors shall be on equal foot, and not one preferred before another, or paid more than another, in respect to his or her debt.”

Though the statute only mentions compromises after the issuing of a commission, it is held to extend to the case where only a docquet is struck. The purpose of striking a docquet is to prevent the bankrupt from wasting his effects in the mean time.

XI. *Neglect to make satisfaction for any just debt to the amount of 100l. within two months after personal service of summons for such debt, upon any trader having privilege of parliament.*—The reasons assigned in 4 G. 3. c. 33. s. 1, for declaring this to be an act of bankruptcy, are these: “To support the honour and dignity of parliament, and good faith and credit in commercial dealings, which require that, in cases of bankruptcy, the laws should have their due course, and that no merchants, bankers, brokers, factors, scriveners, or traders, within the description of the statutes relating to bankrupts, having privilege of parliament, in any case of actual insolvency, should, by any privilege whatever be exempted from doing equal justice to all their creditors.”

But, to make this a perfect and complete act of bankruptcy, a creditor must make and file on record, in one of the courts at Westminster, an affidavit that the debt is justly due to him; and that his debtor, as he verily believes, is a merchant, &c. within the description of the statutes relative to bankrupts.

Under a joint commission, each of the parties must severally be proved to have committed an act of bankruptcy, for the commission cannot be void as to some, and valid as to others.

If the act was doubtful, then circumstances may explain the intent of the first act, and shew it not to have been done with a view to defeat creditors; but a plain act of bankruptcy can never be purged nor explained away afterwards, unless a man pays off or compounds with all his creditors; in which case he becomes what is termed a new man.

When a creditor finds it expedient to issue a commission of bankrupt, he must proceed to strike a docquet, (as it is called) which must be founded on a petition, supported by an affidavit of his debt, and entering into a bond to the great seal for duly proceeding in the commission, which must be executed by the creditor himself, and consequently an infant cannot be a petitioning creditor.



The Lord Chancellor, &c. is empowered and required to issue a commission of bankrupt, and is bound to grant it as a matter of right, and not a matter in which he may exercise his discretion.

But this will not prevent the issuing of another commission on the petition of another creditor; unless the party striking the first docket seals his commission in four days, exclusive of the day of striking the docket.

The creditor or creditors petitioning shall give bond to the Lord Chancellor for proving the debt, as well before the commissioners as upon a trial at law, if the due issuing of the commission shall be contested, and also for proving the party a bankrupt, and further to proceed on such commission as hereafter is mentioned; and if it shall appear that the commission was taken out fraudulently, the Lord Chancellor may order satisfaction, and may assign such bond to the party injured.

The affidavit made by the creditor on suing out the commission is general, and does not mention the particulars by which the bankrupt becomes indebted.

It is said to have been held that the old acts did not require that the person applying for a commission should be a creditor, or that he should prove a debt to any certain amount; but now, by the 5 Geo. II. c. 30, s. 23, no commission of bankrupt shall be issued on the petition of one or more creditors, unless the single debt of such creditor, or two more being partners, shall amount to 100*l.* or unless the debts of two creditors petitioning for a commission shall amount to 150*l.* and of three or more to 200*l.* and the creditors petitioning shall make affidavit of the truth of their debts.

The law does not consider persons whose duties amount to less, to be traders considerable enough to enjoy the benefit of the statutes themselves, or entitle the creditors, for the benefit of public commerce, to demand the distribution of their effects.

It must be a debt at law; for a debt in equity will in no circumstances be a foundation for a commission; and if a legal demand is not in its nature assignable, the assignee, notwithstanding his equitable claim, cannot be a petitioning creditor, as the assignee of a bond.

It has been determined that a creditor, by notes bought in at 10*s.* in the pound, was a creditor for the whole sum; he being a legal creditor to the amount of the sums mentioned in the notes.

A debt at law, notwithstanding the statute of limitation has attached upon it, will support a commission. This is clearly the case as against third persons, or against the bankrupt himself, where he acquiesces in the commission. The statute requires no affidavit as to the time, but only as to the truth and reality of the debt. The statute of limitations relates only to remedy by action: it does not extinguish the debt, or take away any other remedy. But perhaps the bankrupt himself may take the advantage of such an objection, and oppose the commission on that ground.

A debt upon account though not liquidated, is a foundation for a commission of bankrupt, if the creditor can swear to a balance amounting to the sum required.

If a tradesman becomes surety for another, it creates such a debt that the creditor may take out a commission against the surety; a trader being trusted upon the credit of his stock and dealings, as well where he is surety, as where he contracts for his own debt. But this, it should seem, could only be where he is bound absolutely with the principal; or, if conditionally, and only on default of the latter, then that default has actually been made; otherwise the debt would be contingent.

Taking a security of a higher nature after the bankruptcy, for a debt contracted before, does not prevent the creditor from suing a commission upon it; as in the case of a bond taken for a simple contract debt. The higher security is an extinguishment only as to the party; but with regard to the commission, he is still considered as a simple creditor; all creditors under a commission being upon an equal footing with regard to their respective securities.

A simple contract debt contracted while in trade, will not, by the party's giving bond for it after leaving off trade, prevent a commission being founded on it.

A debt due from a partnership is a legal debt to support a separate commission.

A commission founded on an act of bankruptcy by lying two months in prison, cannot be sued till the two months have elapsed; till that time, the act is not completed, and the affidavit to obtain it would be a perjury.

The executors of a bankrupt cannot sue out a commission, for a debt due before the bankruptcy to his testator; such a debt vesting in the assignees, and consequently the executor is not entitled to be the petitioning creditor.

When the commission is awarded and issued, three of the commissioners are to be summoned to attend a private meeting for the purpose of opening the commission, who, after having qualified themselves by taking the oath directed in the statute, proceed to the due execution of their commission, being allowed a sum not exceeding 20*s.* *per diem* each, at every sitting.

Where a creditor has his debtor in execution, he cannot petition for a commission of bankrupt; for the body of the debtor being in execution, is a satisfaction of the debt in point of law. A commission having issued on the petition of a creditor who had the bankrupt in execution, it was on that account superseded.

The commissioners next attend to proof of the petitioning creditor's debt, the trading, and the act of bankruptcy; each of which must be made out to their satisfaction, previous to their declaring the party bankrupt. The petitioning creditor should attend to prove his debt; but where he resides at a distance, or cannot attend from any other reasonable cause, the commissioners, at their discretion, will receive the office copy of the affidavit, on which to found the petition to the chancellor for the commission. But witnesses must be examined before the commissioners to the trading and the act of bankruptcy.



Upon receiving satisfactory evidence, the commissioners proceed to declare and adjudge the party bankrupt, generally, before the date and suing forth of the commission; without precisely specifying the time.

And by the 5 *Geo. II. c. 30*, the commissioners shall also cause notice of the commission being issued, to be given in the *Gazette*, and also notice in writing to be left at the bankrupt's usual place of abode, or personal notice to be given if he is in prison.

In which notice shall be appointed a time and place of meeting of the commissioners; which meeting shall be at three several times within forty-two days, the last of which shall be on the forty-second day: within which time the bankrupt shall surrender himself, and discover his estate and effects.

A bankrupt who does not within forty days after notice in writing, of a commission being awarded and issued against him, such notice being left at his usual place of abode, or of personal service if he be then in prison, and notice given in the *London Gazette* that such commission is issued, and of the time and place of the meeting of the commissioners therein named, surrender himself to them, and sign or subscribe such surrender, and submit to be examined from time to time upon oath; or, being one of the people called Quakers, upon solemn affirmation, before the commissioners, and in all things conform to the several statutes made and now in force concerning bankrupts (being thereof lawfully convicted by judgment or information), shall suffer as a felon, without benefit of clergy.

The great seal, may, however, enlarge the bankrupt's time for surrendering himself, and disclosing or discovering his effects, to fifty days from the end of the forty-two days, so as the order be made six days before the expiration of the forty-two.

Also by the 5 *Geo. II. c. 30, s. 25*, the petitioning creditor is directed at his own costs, to prosecute the commission until assignees shall be chosen; which costs are to be ascertained by the commissioners at the meeting for the choice of assignees, and are to be paid by the assignees to the petitioning creditor out of the first money or effects received or collected by them under the commission. But these costs may be taxed by a master in chancery, on petition to the Lord Chancellor.

The 5 *Geo. II. c. 30*, allows a bankrupt forty-two days to surrender in, but the sooner he surrenders the better for the creditors. Therefore to induce him to surrender, a privilege is granted by the same statute, that he shall be free from arrest; and also after actual surrender for the space of forty-two days, or such farther time as shall be allowed for finishing his last examination. But this particular privilege to enable him to surrender is confined to the act of his going with that view, not a general indulgence for the whole time allowed by the statute. If a bankrupt be abroad, and, on his return with intent to surrender, is arrested on his landing before he can conveniently make his surrender, the privilege shall

extend to him, if it should clearly appear that it was his meaning or determination to surrender.

But this act will only be a protection against the suits of creditors; for, as Lord Hardwicke declared, a bankrupt may be taken and surrendered by his bail within the time of privilege. Bail are no creditors till demitted, and therefore not within the description of the act, which is confined to an arrest, restraint, or imprisonment by his creditors.

Though the lord chancellor only can enlarge the time for the bankrupt's surrender, before he has surrendered at all; yet after he has surrendered to the commissioners, they may enlarge the time for taking his last examination, and he will be privileged from arrest within the time so enlarged by the commissioners.

No commission of bankrupt shall abate, or be void by the death of the bankrupt subsequent to the commission.

Nor upon any demise of the crown.

A creditor has his choice whether he will come in under the commission or not; but, if he chooses to come in, he cannot also proceed at law for the same debt; therefore if the creditor has the bankrupt, in execution, he cannot be admitted as a creditor under the commission: and a petitioning creditor by the very petition, has made his choice.

By the 5 *Geo. II. c. 30. s. 30*, when the commissioners think it necessary for the better preserving the bankrupt's estate, they may immediately appoint one or more assignees, either of the whole estate, or any part thereof; but such temporary assignee may be afterwards removed by the creditors, if they think fit, at the meeting for the choosing of assignees; when he must deliver up to the assignees then chosen all that has come to his hands, or that has been assigned to him by the commissioners.

But these temporary assignments, being productive of much expence, without answering any good purpose, are now seldom made but to prevent the effect of an extent at the suit of the crown; such an extent binding the property if issued before an actual assignment made by the commissioners. N. B. This temporary assignment is wholly unnecessary with regard to copyhold, as not being liable to an extent.

The legislature, considering that the bankrupt is an improper person to be trusted any more with the management of his own estate, appoints other persons in the place of the bankrupt, to whom, for the safety of the creditors, the commissioners convey the bankrupt's effects. The object of the statutes, in respect to the assignment of the bankrupt's effects, for the benefit of creditors, is undoubtedly to place at the disposal of the commissioners, every sort of property, real or personal, that the bankrupt himself is entitled to, of a valuable nature, and capable of being applied towards the payment and satisfaction of debts.

The commissioners, after notice given in the Gazette that a commission has issued against the bankrupt, shall forthwith appoint a time and place for the creditors to meet to choose assignees of



the bankrupt's estate and effects; which meeting for London, and all places within the bills of mortality, shall be at the Guildhall of the said city.

Fourteen days at least ought to be allowed from the notice in the Gazette of the issuing of the commission, to give the bankrupt's creditors, in whatever part of the kingdom they may reside, an opportunity of being present at, and voting in the choice.

They are immediately to appoint a time and place for the choice of assignees, because it may be necessary to take care of the bankrupt's estate and effects; and it must not be laid down as a rule, that, because some of the creditors are beyond sea, therefore they must at all events have an opportunity of voting in the choice, and the creditors be directed to proceed to a new one: if this was to prevail, the choice must be postponed for a great length of time, which would be directly contrary to the act of parliament; and therefore the rule is, that the assignees ought to be continued, unless some objection can be shewn with regard to the substance or integrity of the person who is chosen assignee.

No creditor shall be entitled to vote for assignees whose debt shall not amount to 10*l*.

If assignees act improperly, they are not only liable at law to the creditors for a breach of trust, but they may also be removed on account of corruption or misbehaviour, or for want of sufficient substance or credit, as particularly in the case of becoming bankrupt.

If an assignee is removed, he must join with the old assignee and the commissioners in making an assignment to the new assignee. And where an assignee is removed on account of his own bankruptcy, Lord Hardwicke was of an opinion that he and his assignees must join with the commissioners in executing an assignment to the new assignees.

Whenever it is found expedient to have new assignees, the Lord Chancellor is empowered by the statute, upon the petition of any creditors, to make such orders therein as he may think proper. By general order of Lord Loughborough, on the death or bankruptcy of assignees, the commissioners are authorized, upon application to them by one or more of the creditors entitled to vote in the choosing of assignees, to appoint a meeting for proceeding to a new choice.

On the death of an assignee, who has not accounted for what he has received, and who has left no personal assets, the commissioners may come upon his real estate, as specialty creditors.

At the meeting for choosing assignees, the commissioners shall admit the proof of any creditor's debt, who lives remote from the place of meeting, by affidavit; and also permit any person, duly authorized by letter of attorney from such creditors (oath being made of the due execution thereof, either by affidavit sworn before a master in chancery, or before the commissioners *viva voce*; and in case of creditors residing in foreign parts, such affidavits to be

made before a magistrate where the party shall be residing, and together with such creditors' letters of attorney, to be attested by a notary public, to vote in the choice of an assignee or assignees, in the place of such creditor; and every creditor shall be admitted to prove his debt, without paying any thing for the same; and the commissioners shall assign the estate and effects unto such person or persons as the major part in value of the creditors, according to the debts then proved, shall choose.

The statute having directed that the choice of the assignees shall be by the major part in value of the creditors, one creditor, if his debt be sufficiently large, may choose himself assignee.

At the third meeting at farthest, which must be on the forty-second day after the advertisement in the Gazette, (unless the time be enlarged by the Lord Chancellor, which it may not be for more than fifty days, unless on special circumstances of involuntary default by the bankrupt), the bankrupt, upon notice also personally served upon him, or left at his usual place of abode, must surrender himself personally to the commissioners; which surrender (if voluntary) protects him from all arrests till his final examination is past: and he must henceforth in all respects conform to the directions of the statutes of bankruptcy; or, in default of either surrender or conformity, he shall be guilty of felony, without benefit of clergy, and shall suffer death, and his goods shall be distributed among his creditors.

The commissioners may from time to time appoint new assignees, if the major part of the creditors whose debts amount to 10*l.* shall think fit; and the former assignees shall assign to them in ten days after notice of such choice, and of the new assignees acceptance thereof, signified under their hands, on pain of 200*l.* to the creditors, with full costs.

And the Lord Chancellor, on petition of any creditors, may order former assignments to be vacated, and new assignments to be made of the effects not received; and the commissioners shall cause public notice to be given in the two London Gazettes immediately following the removal of the assignees, and the appointment of others, that the former assignees are removed, and others appointed in their stead, and that the bankrupt's debtors do not pay their debts to the assignees removed.

And such new assignees, on filing a supplement bill, shall be entitled to the benefit of the proceedings in a suit begun in the time of the first assignees.

If more than two of the commissioners should die, by which means there would not be a sufficient number to execute it, or if the commission should be lost, it must be renewed; upon which renewal only half the fees are paid, and the commissioners under the renewed commission proceed from that step which was left incomplete by the former.

Debts may be proved at any of the public meetings appointed by the commissioners; but the amount of the debt must be precisely ascertained. This rule, exclusive of its obvious propriety,



has partly been derived from the power given by the statutes to examine upon oath as to the truth and certainty of the several debts claimed by creditors seeking relief under a commission: the usual proof required is the oath of the creditor; which, if not objected to by the bankrupt himself, or any of the creditors, is generally esteemed sufficient; but if any material objection is raised, the demand must be farther substantiated by evidence. For though the creditor should make a positive oath of a debt, if the commissioners entertain doubts of the truth of what is sworn, they may admit it only as a claim; for the debt must be made out to the satisfaction of the commissioners, otherwise it may be rejected.

Though by the 1 *Jac. c. 15*, creditors might come in and prove their debts, at any time within four months, and until distribution made; it was for some time held, that they could not be admitted after distribution actually made, of any part of the estate, unless under particuilar circumstances. But this strictness was afterwards relaxed; and now, since the alterations by the latter statutes, the court has been very liberal in admitting creditors, and allowing them to come in at any time while any thing remains to be divided, except in cases of gross laches.

If, upon proving a debt under a commission, the creditor swears falsely, he is liable to an indictment for perjury. As he must swear positively and precisely to a particular sum due at the time of the bankruptcy, it must be liquidated and ascertained, or at least capable of being so at that time. It is an invariable rule, that no debt can be proved under a commission of bankrupt, but such as existed before and at the time of bankruptcy.

A person guilty of usury cannot come in to prove his debt as *bona fide* creditor under the commission; for the whole debt is void.

Debts payable upon a contingency, which may never happen, cannot be proved under a commission of bankruptcy.

Contingent debts are not permitted to be proved under a commission of bankruptcy, unless the contingency took effect before an act of bankruptcy committed, because the debt ought to be due and payable before the bankruptcy.

If a surety's engagement is conditional only to pay in default of the principal, the debt is contingent till default made; and cannot be proved against the surety, unless default has been made by the principal before the bankruptcy of the surety.

Where a bond conditioned for the payment of a sum of money, by a principal and surety, has not been forfeited till after the bankruptcy of the surety, the debt cannot be proved under his commission, and therefore he may be sued upon it, notwithstanding his certificate, the debt as to him being contingent.

An award creates a debt at law, which, if the award is before the bankruptcy, is discharged by the certificate, and therefore proveable under a commission.

Bills of exchange and promissory notes, by the 7 *Geo. c. 31*, may be proved under the commission, though not due at the time of issuing the commission.

The holder of a bill or note is entitled to prove his debt under a commission against the drawer, the acceptor and indorser, and to receive dividends upon the whole sum under each, provided he does not upon the whole receive more than twenty shillings in the pound; and if he does, he shall account for the surplus. But if he has received part before he comes to prove, he can only prove or receive dividends upon the residue; because he cannot swear that any more is then due to him. This was formerly held otherwise, but it is now completely settled.

On a bill drawn by way of accommodation, though it cannot be proved as between the parties to be accommodating, yet the holder for a valuable consideration may prove (against all the parties but him from whom he received it) the whole sum contained in the bill; so as not to receive dividends beyond 20s. in the pound on the consideration which he gave.

Bills made payable to fictitious payees may be proved by the indorsee for a valuable consideration, against the indorser. Thus, where the petitioner applied to be admitted a creditor in respect of certain bills indorsed by the bankrupt to the petitioner, which were made payable to fictitious payees, the Lord Chancellor said, that, as against the indorser, it did not signify what the bill was. The indorsee might have his remedy against the indorser, though the bill is a mere nullity in other respects. It is the indorser's business to see what he can make of the bill; but he, by his indorsement, is certainly liable to the indorsee. And he ordered the proof to be admitted.

A bill drawn by a person before his bankruptcy, though not protested till after, may be proved under his commission.

The costs and charges of protesting bills before an act of bankruptcy, may be proved; but costs accrued by protesting bills after an act of bankruptcy cannot.

Commissioners of bankruptcy do not permit creditors to prove interest upon notes or bills, unless it is expressed in the body of them. Lord Hardwicke expressed his approbation of this rule, and observed that, even at law, where notes are for value received, and interest is not expressed, the jury do not give the plaintiff, in an action upon the notes, interest for them but by way of damages only. The creditors may, however, prove the full sum for which the notes were given, notwithstanding they received discount.

The rule, however, appears now to be understood only as applying to distinguish the case of such interest as is due by force of an actual contract between the parties, from that which without such contract might be given by a jury, as a compensation in damages for the detention of a debt; but not to exclude the proof of interest, merely because it is not expressed in the security, provided there appears other satisfactory evidence of a contract between the parties that the debt should carry interest.

Accordingly it has been held that even upon notes payable on demand, without mentioning interest, the interest might be proved



where it was the established custom of the trade to allow it, and that it had actually been paid by the bankrupt, and accounts settled with him, in which it had been charged and allowed between the parties.

But in any case of an insolvent estate, interest is not allowed to be computed lower than the date of the commission.

If a mortgage is found inadequate to the payment of the principal and interest, the mortgagee must apply by petition to have the security sold, and to be admitted a creditor for the residue; but he is not allowed to compute interest lower than the date of the commission.

An equitable creditor, as the assignee of a bond, may prove his debt under a commission, as well as a legal creditor; but he cannot take out a commission.

A vested legacy, though liable to be divested on the legatee's dying under twenty-one year's of age, may be proved on behalf of the infant.

The debts of a woman before marriage, become by marriage, the debts of the husband, and consequently may be proved under his commission.

In cases of mutual credit, when the debts carry interest with both parties, the computation of interest should stop on both sides at the same time.

A receipt for acceptances, as for money received, is not such a counter security as to create a debt capable of being proved.

A guardian may, on petition, be admitted to prove under a commission, on behalf of an infant.

A creditor obtaining goods of the bankrupt, a few days only before he failed, if he suspected he was about to do so, will not be permitted to prove without giving up the goods so obtained.

A bill of exchange or promissory note given for a prior debt, does not amount to payment unless it is duly honoured; but the creditor cannot support an action for the original debt until the bill or note becomes due.

The assignees of the bankrupt were in possession, and the landlord distrained; in consequence of which the assignees applied to the Lord Chancellor to be relieved, and to have the goods redelivered; but his lordship confirmed the right of the landlord to distrain, and dismissed the petition.

But where the landlord neglects to distrain, and suffers the goods to be sold by the assignees, he can only come in with the rest of the creditors.

A landlord cannot distrain, and also come in under the commission; but he has his election either to waive his proof or his distress. But his proving is no determination of his election; for he may afterwards distrain the goods remaining on the premises, and waive the proof.

The commissioners require that every creditor who desires to

prove shall swear whether he has any security or not; and if he has obtained an effectual security upon any part of the bankrupt's property, as a mortgage or a pledge before the bankruptcy, or has a lien upon any part of the effects; though he is not compellable to come in under the commission, and relinquish the advantage he has obtained, yet he will not be allowed both to prove his whole demand under the commission, and retain his particular security, or take the benefit of the lien at the same time. If he insists upon proving, he must deliver up his security, or relinquish his lien, for the benefit of all the creditors under the commission.

Where a security is given generally, if the creditor has two demands, one of which is proveable, and the other not, he is at liberty to apply his security, in the first place, to reduce that demand which is not proveable under the commission.

Where a man becomes bail for another, it is considered as a contingent debt. And if the bail commit an act of bankruptcy, before the judgment, it cannot be proved under the commission.

And yet it has been determined that the creditor may prove the full sum for which notes were given, notwithstanding he received 5*l.* per cent. discount.

It sometimes happens that a creditor who has a just demand upon the bankrupt estate, may be unable to attend for the purpose of swearing to his debt before a dividend is declared; or though he does attend, he may be unable to liquidate or ascertain the exact amount of his debt at the time of the bankruptcy, so as to be able to swear it: in such cases, where the agent of a creditor cannot produce his authority, and in many other cases where there appears a probable foundation of a demand, though not satisfactorily made out, it is usual for the commissioners to suffer a claim to be entered; as it might be a great injustice absolutely to exclude such a creditor, when he may perhaps be afterwards enabled completely to establish his debt; but such claim will not entitle the party to a dividend, as nothing short of an absolute proof of the debt will be effectual for that purpose. And when a claim is not substantiated in reasonable time, the commissioners may strike it out, and generally do strike it out, before a dividend is declared, unless sufficient cause is shewn for prolonging the time. The creditor, however, may afterwards prove his debt, and receive his share upon any future dividends. And even in such cases, where there does not appear to have been gross laches, the Lord Chancellor will order such creditor to be paid his proportion of the first dividend out of the money in the assignee's hands, if it does not break in upon any former dividend.

The statute of the 1 *Jac.* was the first which, in direct times, gave the commissioners a power of examining the bankrupt himself; but since that time this examination has become the most important of all the examinations that are taken under a commission. Before that statute they could not examine the bankrupt's wife; as she could not, at common law, be a witness either for or against her husband. This was, however, found extremely injurious to cre-



ditors, as she, from her situation, must naturally be supposed to be acquainted with the secret dispositions of her husband's property ; it was therefore found necessary by the 21 *Jac.* to subject her also to examination.

The other persons liable to examination by the older statutes, were such as were indebted, or suspected to be indebted to the bankrupt; or persons actually detaining, or suspected of detaining or having in their possession, any property belonging to him ; but by the 5 *Geo. II.* the commissioners are fully authorized to examine all and every person whatever, summoned before, or present at any meeting under the commission.

The statute 1 *Jac.* 1. c. 15, requires that there should be interrogatories exhibited for the bankrupt's examination, that is, questions reduced into writing, which it was formerly held ought to be tendered to the bankrupt ready drawn; but this is altered by the 5 *Geo. II.* c. 30, which enacts that the bankrupt shall answer all questions put by the commissioners, as well by word of mouth as on interrogatories in writing. And since this latter statute, the commissioners may, at their discretion, examine in the one way or the other.

And this statute also requires that those persons who are examined by the commissioners, shall, if required, sign and subscribe their examination; unless they have a reasonable objection either to the wording thereof, or otherwise, of which the commissioners are to judge.

Upon certificate under the hands and seals of the commissioners, that such commission is issued, and such person proved before them to become a bankrupt, it shall be lawful for any judge or justice of the peace, and they are required, upon application made, to grant their warrant for the taking and apprehending such person, and him to commit to the common gaol of the county where he shall be apprehended, there to remain until he be removed by order of the commissioners by their warrant; and the gaoler to whose custody such persons shall be committed, is required to give notice to one or more of the commissioners, of such person being in his custody; whereupon they shall send their warrant to him to deliver him to the person who shall be named in the warrant, who shall convey him to the commissioners to be examined; and the said commissioners, by such or any other warrant, may seize the goods and papers of such bankrupt, which shall be in any prison; the necessary wearing apparel of such bankrupt, or of his wife or children, excepted.

But if any person so apprehended shall, within the time allowed, submit is to be examined, and conform as if he had surrendered, he shall have the benefit of this act, as if he had voluntarily come in.

Hence it seems that the bankrupt shall not be apprehended or committed until he shall have made default in not surrendering and making discovery, after due notice, as aforesaid.

Every bankrupt after assignees shall have been appointed

shall deliver upon oath or affirmation, before a Master in Chancery, or a justice of the peace, unto such assignees, all books of accounts, papers, and writings, not seized by the messenger of the commission, and not before delivered up, and then in his power, and discover such as are in the power of others, that may any way concern his estate, and being not in custody, shall at all times attend the assignees, on reasonable notice given to him in writing, or left for him at his place of abode, in order to assist in making out the accounts of the estate.

And such bankrupt, having surrendered, shall, at seasonable times, before the expiration of the said forty-two days, or such further term as shall be allowed to finish his examination, be at liberty to inspect his papers, in presence of the assignees, or some person appointed by them, and to bring with him for his assistance such persons as he may think fit, not exceeding two at a time, and to make extracts and copies from thence, the better to enable him to discover his effects.

And in order thereto, the said bankrupt shall be free from arrest or imprisonment of his creditors in coming to surrender, and from his surrender, for the said forty-two days, or such further term as shall be allowed, provided he was not in custody at the time of surrender; and if he be arrested for debt, or on an escape warrant, coming to surrender, or after surrender within the said term, then, on producing the summons under the hands of the commissioners or assignees, to the officer who shall arrest him, and making it appear to such officer that such notice is signed by them, and giving the officer a copy thereof, he shall be immediately discharged: and if any officer shall in such case detain such bankrupt, he shall forfeit to him for his own use 5*l.* a-day, for every day he shall detain him, by action of debt, with full costs.

And by the same statute, if any bankrupt be in prison or custody at the time of issuing the commission, and is willing to submit to be examined, and can be brought before the commissioners and creditors, the expence thereof shall be paid out of his estate; but if such bankrupt is in execution, or cannot be brought before the commissioners, the commissioners shall attend him in prison, and the assignees are required to appoint a person to attend him in prison, and to produce him his books and papers, in order to prepare his last discovery and examination; a copy whereof the assignees shall apply for, and the bankrupt shall deliver to them, ten days at least before such last examination.

And the commissioners may examine on oath (as well by word of mouth as upon interrogatories in writing) every such bankrupt, touching all matters relating to his trade, dealing, lands, tenements, goods, chattels, effects, debts, bills, bonds, books of account, and such other things as may tend to disclose his estate, or secret grants, conveyances, and eloining of his lands, tenements, goods, money, and debts, as the commissioner shall think meet; and they may also examine, in manner aforesaid, every person duly summoned before,



or present at any of their meetings, touching all matters relating to the person, trade, dealings, estate, and effects of the bankrupt, and any act of bankruptcy committed by him, and also reduce into writing the answers of verbal examinations of the bankrupt, or other person, had or taken before them; which examination, so reduced into writing, the party examined shall sign and subscribe.

If any bankrupt or other person shall refuse to answer, or shall not fully answer to the satisfaction of the commissioners, all lawful questions put to him by the commissioners, as well by word of mouth as on interrogatories in writing or shall refuse to sign and subscribe his examination so reduced into writing (not having a reasonable objection either to the wording thereof, or otherwise, to be allowed by the commissioners,) they may, by warrant under their hands and seals, commit him to such prison as they shall think fit, there to remain without bail or mainprise, until he shall submit himself to the commissioners, and full answer make to their satisfaction to all such questions as shall be put to him (which questions must be specified in the warrant of commitment,) and until he shall sign and subscribe his examination.

And any gaoler permitting such person to escape, or go out of prison, shall forfeit 500*l.* to the creditors.

As the commissioners are not restrained from their examination in the intermediate times, neither is their power limited only to the forty-two days, or the enlarged time. The surrender within the limited time, and submitting himself to be examined, is of consequence to the bankrupt himself, as it will save him his felony; but it may sometimes be impossible for him to finish his examination within the limited time; nor does the act require that it should be so; and the commissioners may adjourn his examination, and compel him to make further answer, after that time, and till he has made full answer to their entire satisfaction.

But in the case here cited, either there had been no examination on the forty-second day, or it had not been then finished. But there seems to be no case in which there has been any determination upon the commissioners' power of subsequent examination of a bankrupt, after having passed what is called his last examination.

So careful is the law to avoid any fraud, dishonesty, or concealment on the part of the bankrupt, that an agreement by the friends of the bankrupt, to pay a sum in consideration that the creditors would not examine him as to particular points, is void.

As an inducement to persons acquainted with any concealments of bankrupts' property, to come forward, an allowance of *5l. per cent.* and such further reward as the assignees and creditors shall think fit, out of the property discovered, is offered to every person who at any time after the time allowed for the bankrupt's surrender and conformity, shall voluntarily make discovery of any part of the bankrupt's estate, not before come to the assignees.

The commissioners may examine the bankrupt on all matters to obtain a full disclosure of his estate and effects, and the manner of

of his having disposed of them, notwithstanding such examination should subject him to penalties; as is the case of smuggling, or gaming: and should the bankrupt object to any question, he must demur to the interrogatories, and the Lord Chancellor will judge of the question upon a petition; or if the bankrupt should refuse to answer any question, and the commissioners commit him; if the delinquent brings an habeas corpus, the question must be set forth particularly in the return to the habeas corpus, that the judges may determine whether it was a lawful question or not.

The Lord Chancellor may enlarge the bankrupt's time of surrender for fifty days, after the end of forty-two; but if after he has failed to surrender at the appointed day, the fifty days elapse, he cannot enlarge the time so that the bankrupt can have any benefit from it as to saving the felony: but he will order the bankrupt's examination to be taken, in any case where the bankrupt himself, by an innocent default, has neglected to surrender, or where from the absence of commissioners, his surrender could not be taken: but not where his default has been wilful.

Though the Lord Chancellor, as has been already observed, in cases of innocent default, by a bankrupt, will make an order for taking his surrender at a future day, this does not save the felony, or avoid the effect of the statute; but has merely the effect of declaring the opinion of the court, that the bankrupt's omission to surrender was not with a fraudulent intent.

The Lord Chancellor has power, in cases of peculiar hardship, to supersede the commission, and thereby put a stop to any proceedings against the bankrupt. Lord Macclesfield, in more instances than one, superseded a commission of bankrupt, where the bankrupt had not surrendered himself within the forty-two days, as no intention appeared in the conduct of the bankrupt to defraud his creditors by not appearing within the time appointed. It seems reasonable, however, that the facts which would induce the Chancellor to impede the ordinary course of law, would also be a good defence to an indictment; for the legislature, it is presumed, never meant to inflict the penalty of death upon an involuntary neglect to surrender within forty-two days. And Lord Hardwicke declared his opinion, that particular circumstances might amount to a defence upon a criminal prosecution.

Where a bankrupt, within the forty-two days, without having received any summons from the commissioners, delivered his keys and effects to the messenger, and promised to submit to the commissioners; and was afterwards arrested at his house on the first day appointed for his surrender, and about an hour after he had been served with the summons from the commissioners. Lord Chancellor King held that what the bankrupt had done under the circumstances, being all he could then do, was a compliance within the act, and he discharged the bankrupt.

If the bankrupt, at any time between the opening of the commission and the finishing of his examination, should refuse to attend



when summoned by the commissioners, they may certify that the commission is issued, and the party proved before them to be bankrupt; and upon such certificate, any judge or justice of the peace is required, upon application to him for that purpose, to grant a warrant for apprehending him and committing him to prison, till removed by the commissioners' warrant. And it was held by Lord Hardwicke to be immaterial whether the commissioners in their certificate, stated the cause of their summoning the bankrupt, because the judge, upon their barely certifying that the bankrupt refused to attend, was obliged to commit him.

When a party is committed, it is incumbent on him to send word when he will submit and answer the questions.

But the meeting must be at the expence of the estate, though it arises from the misconduct of the bankrupt; for the bankrupt is supposed to have no estate.

The commitment of a bankrupt, not pursuing the words of the statute, the prisoner shall be discharged.

By the 5 G. II. c. 30, s. 19, the gaoler shall, on the request of any creditor who shall have proved his debt, and shewing a certificate thereof under the hands of the commissioners, produce him to such creditor, on pain of 100*l.* to the creditors, by action of debt.

By the same statute, s. 1, if any bankrupt shall not, on his examination, fully discover all his estate, and how disposed of, except what has been *bona fide* disposed of in the way of his trade and dealings, and except what has been laid out in the ordinary expence of his family, and also deliver up to them all his effects (except the necessary wearing apparel of himself, his wife and children;) then in case of any default and wilful omission in not surrendering and submitting to be examined, and if he shall conceal or embezzle any part of his estate to the value of 20*l.* or any books of account, or writings relative thereto, with intent to defraud his creditors, and be thereof convicted by indictment or information, he shall be guilty of felony without benefit of clergy, and the estate shall go among the creditors seeking relief under such commission.

And any person who shall have accepted of any trust, and shall wilfully conceal any estate of any bankrupt, and shall not within forty-two days after the commission shall issue, and notice given in the Gazette, discover such trust and estate in writing to one or more of the commissioners or assignees, and submit to be examined (if required), shall forfeit 100*l.* and double the value of the estate concealed, to the creditors, by action of debt, with full costs.

The commissioners may examine, upon oath, the wife of the bankrupt, respecting a discovery of his estate, goods, and chattels, concealed, kept, or disposed of by his wife, in her own person, or by her own act or means, or by any other person; and she shall incur such danger and penalty for not coming before the commissioners, or for refusing to be sworn and examined, or for not dis-

closing the truth upon her examination, as by former laws are made and provided against any other person in the like case.

But the wife cannot be examined against her husband respecting his bankruptcy, or whether he had committed an act of bankruptcy, or as to how or when he became a bankrupt; and if the commissioners commit her, and though the warrant of commitment mentions it to be as well for refusing to discover the goods of the bankrupt, as the time and manner of his bankruptcy, yet the commitment was held illegal, and the wife ordered to be discharged.

The object of the statutes, taken collectively, is to place at the disposal of the commissioners, for the benefit of the creditors, every sort of valuable property, real as well as personal, that the bankrupt is entitled to, which is capable of being applied towards the payment and satisfaction of debts.

The commissioners shall have power by their discretion to take such order with the lands of such bankrupt, as well copy or customary hold as freehold, which he had in his own right before he became a bankrupt, or which he purchased jointly with his wife or child to the only use of such bankrupt; and also with all his money, goods, chattels, wares, and merchandizes, and cause all the same to be searched and appraised to the best value they may, and the same to be sold by deed indented, and inrolled in a court of record, or otherwise ordered for the payment of the creditors.

And the commissioners may, by deed indented, and inrolled at Westminster, in six months, sell the bankrupt's estate, in tail, whereof no reversion or remainder is in the king, or of the king's gift; which sale shall be good against all persons whom the bankrupt by common recovery might cut off.

The commissioners in England may sell the bankrupt's goods in Ireland; and, notwithstanding a dictum of Lord Mansfield to the contrary, it seems now decided, that, by the assignment of the commissioners all the bankrupt's property, whether in England or abroad, is conveyed to the use of his creditors.

The assignment passes the bankrupt's personal estate, though out of the territory of England, whether in countries dependent on the crown of Britain, as Scotland, Ireland, or the colonies; or independent on, as America; and this upon the general principle that personal estate has no locality, but is every where subject to the law which governs the person of the owner; and they had doubtless such property in contemplation, when they used the words, "money, goods, &c. wheresoever found or known."

But where the relation of a wife gives an estate or sum of money in trust, to be laid out for the benefit of the wife, and to be settled so that after the death of the wife it might come to her children, and in the meantime to be paid to such person as ought to receive the profits, the commissioners cannot assign it, for it is not liable to the creditors of the husband.

Of debts, which constitute so large a part of a trader's effects,



the assignment is provided for by an express and very special clause in the statutes.

The commissioners may assign a debt or chose in action due to the wife of a bankrupt, or a mortgage made to her *dum sola*, for the right of the debt is plainly vested in the assignees, though the legal estate of the inheritance of the land in mortgage continued in the wife.

They may also assign a right of action for money lost by the bankrupt at play. The debt does not attach by the commencement of an action for it, but attaches in the loser the moment the loss is paid; and such money is part of his property which has wrongfully passed to the winner, and for which the assignees of the former have therefore a right to sue.

But a right of action for slander is not assignable.

Where a bankrupt is entitled to stock in the funds, and he refuses to transfer it, the Lord Chancellor, upon petition, may order him to transfer it.

The commissioners may sell an advowson, but not the void turn of a church; and if the church is void at the time of the sale of the advowson, the bankrupt himself shall present, and not the vendee under the commission.

They cannot sell an office that concerns the administration of justice within the 5 and 6 *Edw. VI.* as the office of a serjeant at mace in the city of London, whose duty it is to execute writs and processes directed to the sheriff.

Neither can they sell that of a sworn clerk of the Six Clerk's Office.

A gentleman pensioner became a bankrupt, and the court ordered his place to be sold for the benefit of the creditors.

It has been decided that a half-pay officer becoming a bankrupt is not bound to discover or surrender his half-pay upon his last examination. And the authority is completely established by some recent determinations, in which it has been held that an officer cannot himself assign either his full or his half-pay, and this upon the principles of public policy.

If any person shall convey or assure any lands or estate, to any person, on condition or power of redemption at a day to come, by payment of money or otherwise, the commissioners, before the time of the performance of such condition, may appoint, under their hands and seals, any person or persons to make tender or payment of money, or other performance, as fully as the bankrupt might have done; and the commissioners shall, after such tender or performance, have power to sell such redeemed estate for the benefit of the creditors, as fully as they might sell any other estate of the bankrupt.

Effects which a bankrupt has as executor only, shall not be applied to the use of the creditors, but shall go according to the directions of the testator.

The commissioners cannot assign an annuity for life given by will to a trader, and to be paid into the annuitant's own hands only, and that a receipt under his own hand, and no other, should be a sufficient discharge for the payment thereof; and that if the same should be alienated, it should immediately thereupon cease and determine.

A bankrupt's moiety of an estate in joint tenancy may be sold.

Where a bankrupt mortgages several estates for several sums, and one should be found deficient, and the other more than sufficient, the mortgagee will be entitled against the assignees, if they should redeem one, to make them redeem both.

A bankrupt being indebted to the crown, as deputy post-master, and, upon an extent being issued, having promised to pay also a debt to the crown, due from his father, who had been in the same office; the assignees applied to have the extent discharged upon payment of the bankrupt's own debt. This was, however, refused, unless both debts were paid.

The statute of limitations will run against the assignees from the time of the original promise to the bankrupt. So where an action brought against the defendant by an assignee, he pleaded the statute of limitations: the court resolved that the statutes of bankrupts transfer the right to the assignee; but it is only the old right which the bankrupt had before he had committed any act of bankruptcy, and therefore the assignee must take it in the same plight and condition as the bankrupt himself had it: and that the statute of limitations was a bar.

If a creditor before a bankruptcy agrees to take a smaller sum than his debt, on condition of its being paid precisely on a certain day, and the debtor fails of payment, he cannot be relieved; and if the debtor becomes a bankrupt, the assignees will not be entitled to bind the creditor by his composition, but he has a right to prove his whole debt.

Where the bankrupt has a lease, though the term passes by the assignment, the assignees will not be liable for rent accruing after the bankruptcy, if they do not take possession.

Assignees succeed to all the bankrupt's beneficial rights of property, and, in many cases, take even a better right than the bankrupt himself, as against third persons; and may impeach transactions which the bankrupt could not have impeached.

Money owing out of England to a bankrupt, may be attached by the law of the place, after the bankruptcy, for a debt due before it.

The commissioners, or any other person or officer by them deputed and appointed, by a warrant under their hands and seals, may break open the house, chambers, shops, warehouses, doors, trunks, or chests of the bankrupt, where any of his goods or estates shall be or reputed to be, and seize any of his goods, wares, merchandizes, (necessary wearing apparel for himself, his wife, and children ex-



cepted) and any of his books, papers, or writings, which shall be in his custody or possession.

And by the 21 *Jac. c. 19, s. 7*, if any bankrupt shall, upon his examination before the commissioners, be found fraudulently to have conveyed away his lands, goods, or other estate, to the value of 20*l.* to defraud or hinder his creditors of the same, and shall not discover the same, and (if it lie in his power) deliver the same to commissioners; or if he cannot make it appear to the commissioners that he has sustained some casual loss, whereby he is disabled to pay what he oweth, he may be indicted at the assizes or sessions, and upon conviction, he shall be set upon the pillory in some public place for two hours, and have one of his ears nailed to the pillory, and cut off.

And if any bankrupt shall convey to any of his children, or other persons any manors, lands, or goods, or transfer his debts into other men's names, except the same shall be conveyed or transferred on marriage of any of his children, or for some valuable consideration, the commissioners may sell or dispose thereof in as ample a manner as if such bankrupt had been actually seised or possessed thereof.

But by 19 *Geo. II. c. 32*, a real creditor shall not refund to the assignees any money received of the bankrupt before the issuing of the commission, and when he had no knowledge of his becoming a bankrupt.

By the 21 *Jac. c. 19, s. 11*, if any person becoming a bankrupt shall, at any time, by the consent of the owner, have in his possession and disposition any goods whereof he shall be reputed owner, and take upon him the sale or disposition thereof as owner, the commissioners shall have power to sell the same for the benefit of the creditors, as fully as any other part of the estate of the bankrupt.

Where it shall appear that there has been mutual credit given, or mutual debts between the bankrupt and any other person, the commissioners or assignees shall state the accounts, and one debt may be set against another, and the balance of such accounts shall be claimed or paid.

Debts payable certainly at a future day, though after the bankruptcy, and which are placed by the 7 *Geo. I.* upon the same footing with debts payable before the bankruptcy, may be set off as mutual debts within 5 *Geo. II.* the statutes being taken collectively, and if such a debt is not in strictness a mutual debt, it may at least be a mutual credit.

But Lord Hardwicke held, that a debtor to a bankrupt before his bankruptcy, and a creditor to him upon a contingency that took place after the bankruptcy, shall not be at liberty to set off under this clause.

And Lord Chancellor Cowper held, that, where there was mutual credit between a bankrupt and a creditor, the balance should only be paid, and that the clause of the statute was not to be construed of dealings in trade only, or in case of mutual running accounts,

but also where one credit was upon mortgage, and the other upon note; observing that, in all cases of mutual credit, it was natural justice and equity that only the balance should be paid.

But Lord Chancellor King was of opinion, that joint debts could not be set against a separate demand due to the bankrupt, this case not being within the statute of *Geo. II. c. 22, s. 13.*

The statute for setting off mutual debts has been determined not to extend to assignees of bankrupts; because they cannot be considered mutual debts; for where there are mutual debts, there must be mutual remedies. But the case is expressly provided for by *5 G. II. c. 30. s. 28.* and in an action at law the defendant may set off his demand against the plaintiff, and there is no occasion to come into a court of equity for an injunction to the suit of law, for an account. It has, however, been since held, that a defendant may, under the *2 Geo. I.* set off a debt due to him from the bankrupt, for the assignees are to be considered as the bankrupt.

If a banker receives and pays money an account of a bankrupt, after notice of his bankruptcy, he cannot set off the payment against the receipts.

The debtor of a partnership cannot, against the partnership debt, set off a debt due to him from one of the partners, because the debts are between different persons, and in distinct rights; and the debts from the partnership must be first paid before any part of the fund can be applied to the separate debts of the respective partners. But if there should be a surplus, then out of the partner's share of that surplus, the debtor of the partnership may deduct the partner's separate debt to himself.

A surviving partner may set off a debt due to him jointly with the deceased partner, against a separate demand upon him in his own right; the right of action for such debt surviving to him alone.

An executor cannot, against a debt due from him to the bankrupt, set off one due from the bankrupt to the testator; nor even if the executor should also be residuary legatee, as it would require an account to be taken of the testator's whole estate, to know whether there was a surplus to afford a subject of set-off, and might be productive of infinite expence, it being often doubtful whether executors can take a residue.

A debt due from the assignees, after bankruptcy, cannot be set off against a debt due to the bankrupt before it; nor a debt due from the bankrupt, before the bankruptcy, against a debt due to the assignees after it.

Having paid in part for the goods does not take away the right of stopping *in transitu*, as it subsists unless the whole of the price has been paid. But the consignor's right is gone when the value has been paid; the sale is then complete, and lien is out of the question.

The right of stopping *in transitu* is not taken away by the consignee's making himself liable by accepting bills upon the credit of the assignments. Whenever goods are sent in the way of sale, the



consignee is liable to pay; but till payment, the owner, in case of his failure, may stop them *in transitu*.

Goods sent by order of the vendee to a packer, have been considered, while they continued in the hands of the packer, as being still *in transitu*, as between vendor and vendee.

Intimately connected with the law of set-off, is that upon the subject of *lien*. Natural equity is much in favour of liens, and the courts of justice have always paid great attention to them, so far as was consistent with positive law. They will therefore imply a contract of *lien* from the general course of trade, or from the nature of the particular mode of dealing between the parties.

Where a person has acted as factor for another, every thing in his hands is considered as a pledge, not only for incidental charges, but as an item of mutual account for the general balance due to him so long as he retains the possession.

A *lien* may either be by express contract, or by implication from the usage of trade, or the mode of dealing, in the particular case: and it may be either a general lien for the balance of a general account between the parties, or a partial lien extending only to what is due for particular charges.

But a person has no *lien* unless the goods actually come to his possession, nor has he any general *lien* where the property is delivered for a particular purpose.

A banker has a *lien* for the general balance of his account.

An insurance broker has a general *lien* upon the policies in his hands; and notwithstanding he parts with the policy, if it comes again into his hands, the *lien* revives.

By the custom of trade, tradesmen have generally a partial *lien* for the price of their labour upon the specific goods in their hands, and may retain them as a pledge to that extent.

A factor, or any other person having a *lien*, loses it on parting with the possession of the property, and is only on a footing with the common creditors; but his *lien* will revive on its coming again into his hands.

The wages of the captain and his seamen have been determined to be a *lien* on the ship.

A miller has a *lien* for the price of grinding corn. So a dyer has a *lien* for the price of dyeing the specific goods, but for nothing more.

An attorney has a general *lien* upon papers delivered to him.—Where an attorney has been employed by one who afterwards became bankrupt, and the assignees petitioned to have the papers delivered up, and that the attorney might come in for his demands with the other creditors, the Lord Chancellor said the attorney had a *lien* upon the papers in the same manner against the assignees as against the bankrupt; and though it does not arise by an express contract of agreement, yet it is as effectual, being an implied contract by law. But he said, that papers received after the bankruptcy could not be retained.

Though the statutes empower the commissioners to take the whole

of the bankrupt's property, they expressly limit this power to that of transferring to the assignees only such interest as the bankrupt himself had, and such as he might lawfully have disposed of for his own benefit.

Whatever interest a husband acquires by marriage in the wife's property; all that he himself has power to dispose of, passes to the assignees by the assignment under the commission: they may take the rents and profits of her real estate, during the coverture; her personal chattels in possession absolutely; and her chattels real, and choses in action, terms, mortgages, debts, legacies, interests, and possibilities, in the same manner as they vested in the husband.

Where a wife is a sole trader, and carries on a separate trade, according to the custom of London, the assignees of the husband have no right to her effects in her separate trade.

The wife's dower is not affected by the subsequent bankruptcy of the husband.

Separate creditors are allowed to come in under a joint commission; but the joint effects are first to be applied to pay the partnership debts, and then the separate debts; and as to the separate effects, first the separate creditors, and afterwards the partnership creditors, are to be paid out of the same.

*A* gives a promissory note for 200*l.* payable to *B*, or order; *B* indorses it to *C*, who indorses it to *D*. *A*, *B*, and *C*, became bankrupts, and *D* received 5*s.* in the pound, on a dividend made by the assignees of *A*. Lord Chancellor King ordered *D* to come in as a creditor of 150*l.* only out of *B*'s effects.

Lord Chancellor Hardwicke was also clearly of the same opinion upon another occasion.

If any lands, goods, or other estate of any bankrupt, shall be extended after he becomes a bankrupt, under colour of his being an accountant, and indebted to the king, it shall be lawful for the commissioners to examine upon oath, whether the said debt was due to such debtor or accountant, upon any bargain or contract originally made between such accountant and the said bankrupt and if such bargain or contract was originally made with any other person than the said accountant, or for the use of any other person, the commissioners' proceedings shall be available against the said extent.

Otherwise, an extent of the crown is available against a commission of bankruptcy, the crown not being within the statutes of bankrupts.

A mortgagee of land may choose whether he will come in as a creditor under the commission, or not; for such creditor having a real security in his own hands, is entirely safe; as he has a property in the land mortgaged, precedent to the translation of the property to the commissioners, who in such cases have only an equity of redemption, and are in no better condition than the bankrupt himself.

Any creditor having security for his debts by judgment, statute



recognizance, specialty, with penalty or without, or other security, or having no security, or having made attachments in London, or other place, of the goods of such bankrupt, whereof there is no execution or extent served and executed upon the lands, goods, and estate of such bankrupt, before he shall become bankrupt, shall not be relieved upon any such judgment, &c. for more than a rateable part of their debts, with the other creditors, without respect to any penalty contained in such judgments, or other security.

Upon the equity of the statute of 8 *Ann. c. 14*, (which directs that, upon all executions of goods being upon any premises demised to a tenant, one year's rent, and no more, shall, if due, be paid to the landlord,) it has been held, that under a commission of bankrupt which is in the nature of a statute execution, the landlord shall be allowed his arrears of rent to the same amount, in preference to other creditors, even though he has neglected to distrain, while the goods remained upon the premises.

A landlord is not restricted to one year only, as in the case of executions, but may distrain for his whole arrear.

If there are not sufficient goods upon the premises to pay the landlord's rent, he can then only take what goods there are upon the premises; and, after they are appraised and sold, as the law in cases of distress for rents directs, then the landlord may come in as a creditor for the rent remaining due to him, with the rest of the creditors under the commission. But if the landlord of a bankrupt suffers the assignees to sell off the goods, he is not entitled to his whole rent, but must come in with the other creditors under the commission.

Commissioners generally recommend to the assignees to pay the whole of the wages to menial servants; but where the wages of clerks, and other superior servants, are large, and the arrears long, they should come in as common creditors.

Every person who shall give credit on securities, payable at a future day, for goods delivered to persons who shall become bankrupts before the time of payment, shall be admitted to prove their securities of agreements, and shall have a dividend in the same proportion as the other creditors, deducting interest from the time of payment to the time it would become due.

By the 19 *Geo. II. c. 32, s. 2*. the obligee in any bottomree or *respondentia* bond, and persons assured in any policy of insurance, shall be admitted to claim; and after the loss or contingency, to prove the debt thereon, as if the same had happened before the issuing of the commission.

And insurances on lives are held to be within the act, though the preamble is confined to marine insurances, the enacting words being general, viz. the assured in any policy of insurance.

Where the bond is given by a trader, to indemnify another who has become surety for him, if the indemnity bond is forfeited before bankruptcy, it will entitle the surety to prove payments made by him subsequent as well as prior to the bankruptcy.

The assignees shall be obliged to keep books of account wherein they shall enter all sums of money, or other effects, which they shall have received out of the bankrupt's estate; which every creditor, who has proved his debt, may inspect at all seasonable times.

Assignees are not answerable for losses occasioned by their own necessary acts; but if an assignee trusts a person with the payment of money, who fails, and the money is lost, such assignee shall be answerable over to the creditors, unless he consulted the body of the creditors in the appointment of such agent.

If any person shall swear or affirm that any sum of money is due to him from the bankrupt, which is not really due, knowing the same to be not due, he shall suffer the penalties inflicted by the statutes against wilful perjury, and shall be liable to pay double the sum so sworn or affirmed to be due.

Persons chosen assignees shall, after the expiration of four months, and within twelve months from the time of issuing the commission, cause at least twenty-one days' notice to be given in the Gazette, of the time and place the commissioners and assignees intend to meet to make a dividend; at which time the creditors, who have not proved their debts, shall be at liberty to prove them: and the assignee shall produce fair accounts, and be sworn to them before the commissioners, if required by the creditors; and they shall be allowed all reasonable expences; and the commissioners shall order such part of the neat produce of the bankrupt's estate in the hands of the assignees as they shall think fit, to be divided amongst the creditors, and shall make such order for a dividend in writing, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver to each of the assignees a duplicate of such order; which order shall contain an account of the time and place of making such order, and the sum total of the debts proved, as well as the sum total of the money remaining in the hands of the assignees, and how much in the pound is then ordered to be paid; and the assignees, in pursuance of such order, and without any deed of distribution, shall forthwith make such dividend, and take receipts for the same in a book to be kept for that purpose.

The statute allows the assignees a complete four months, from the issuing the commission, to make a dividend; therefore the Lord Chancellor will not interfere respecting the dividend till that time has elapsed. But if the assignees at the expiration of the four months, refuse to make a dividend, the Lord Chancellor will, upon petition, order them to attend the commissioners, at a meeting appointed for that purpose, and direct them to declare a dividend, if, upon examination of the accounts, and the assignees upon oath, there appears to be a sufficient fund; or the commissioners themselves are empowered, without an order of the court, to summon the assignees to produce their accounts, and shew cause why a dividend should not be declared; which summons and meeting for the



assignees attendance may be had without any expence, upon the application of a creditor who has proved his debt.

If a creditor has obtained an unfair possession of the bankrupt's property, his share of the dividend may be retained until he gives up the property so unduly possessed.

An assignee neglecting to make a dividend in a proper time, may be charged with interest; though the money has lain at a banker's, and he has not received any interest for it. But the executors of an assignee cannot be considered in the same light as assignees; and therefore, as executors, they are not expected to pay till called upon.

As an assignee is no more than a trustee, he is not permitted to blend his private affairs with those of the commission; he cannot therefore stop a creditor's share of a dividend for his own private debt to himself.

And by the 13 *Eliz. c. 7, s. 2.* every one of the creditors shall be paid a portion, rate-like, according to their debts.

Upon the common equity of the court of chancery, if creditors will make an affidavit that they have not seen the advertisement, they will be admitted, so far as not to disturb the former dividend, and by that means must, in the first place, be brought up equal to the creditors under the former dividend, before the commissioners can proceed to make a second.

Within eighteen months after issuing the commission, the assignees shall make a second dividend, in case the estate was not wholly divided upon the first, and shall cause notice to be inserted in the *Gazette*, of the time and place the commissioners intend to meet to make a second dividend, and for the creditors who shall not have proved their debts, to come and prove the same; and, at such meeting, the assignees shall produce their account on oath; and what upon the balance shall appear to be in their hands, shall, by order of the commissioners, be forthwith divided; which second dividend shall be final, unless any suit shall be depending, or any part of the estate standing out that cannot have been disposed of, or that the major part of the creditors shall not have agreed to be sold, or unless some other or future estate of the bankrupt shall afterwards come to the assignees; in which case the assignees shall, as soon as may be, convert such future estate into money, and shall, within two months after, by the like order of the commissioners, divide the same.

The discharge of a bankrupt from his debts, after having surrendered to his creditors all that he was possessed of, may, perhaps, seem to be little more than an act of justice; but the allowance of a sum of money out of his effects (which were insufficient to discharge his debts) for his future support and maintenance, and to enable him to get into an honest and industrious line of life, does honour to the liberality of the modern law.

A bankrupt who shall surrender and conform, shall be allowed

5*l.* per cent. out o. the neat produce of the estate that shall be received, if after such allowance, the neat produce of his estate will pay 10*s.* in the pound, so as the said five per cent. shall not amount to above 200*l.*

If his estate will produce 12*s.* 6*d.* in the pound, he shall be allowed 7*l.* 10*s.* per cent. so as not to exceed 300*l.*

If it will pay 15*s.* in the pound, the bankrupt shall be allowed 10*l.* per cent. so as not to exceed 300*l.*

And if the bankrupt's estate will pay 15*s.* in the pound, he shall be discharged from all the debts by him owing at the time he became bankrupt: and if he shall be arrested or prosecuted for any debt due before that time, he shall be discharged on common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence; and the certificate of his conforming, and allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining the certificate; and a verdict shall pass for the defendant, unless the plaintiff can prove that the certificate was obtained fraudulently, or can make appear a concealment by the bankrupt to the value of 10*l.*; and if the plaintiff is cast, the defendant shall have full costs.

To prevent the too common practice of frequent and fraudulent or careless breaking, a mark is set upon such as have been once cleared by a commission of bankrupt, or have compounded with their creditors, or have been delivered by an act of insolvency. Persons who have been once cleared by any of those methods, and afterwards become bankrupts again, unless they pay full 15*s.* in the pound, are only thereby indemnified as to the confinement of their bodies; but any future estate they shall acquire remains liable to their creditors, excepting their necessary apparel, household goods, and the tools and implements of their trades.

A person against whom a second commission of bankrupt has been issued, who has not paid fifteen shillings in the pound, is liable to an action by any of his creditors, notwithstanding they have signed his certificate. This was determined in the case of *Philpot v. Corden*, before Lord Kenyon, in the court of King's Bench.

If the neat produce of the bankrupt's estate shall not amount to 10*s.* in the pound, such bankrupt shall not be allowed 5*l.* per cent. but shall be allowed so much as the assignees and commissioners shall think fit, not exceeding 3*l.* per cent.

But any allowance shall not be paid to the bankrupt till a final dividend shall be made, because, till that time, creditors may continue to come in to prove their debts.

Nor can he be entitled to it before he has had his certificate; for if the creditors should consent to give it him before, it would be of no service, as they might take it from him again the next moment; for it would be liable, in his hands, to satisfy any creditor, till he is entirely cleared by the certificate.



If he has not obtained his certificate when a final dividend is made, he cannot recover it of the assignees, though he obtains his certificate afterwards. The assignees, when they make such a dividend as would otherwise entitle him, are not bound to retain the allowance for him. He must first put himself in a situation to demand his allowance, by obtaining his certificate, before the dividend is paid.

The allowance, whenever the bankrupt becomes entitled to it, is a vested interest, and consequently transmissible to his representatives.

Accordingly, upon a petition setting forth that the petitioner is the representative of a bankrupt, whose estate had paid 10s. in the pound to his creditors under the commission, and thereby became entitled to an allowance of 5*l.* per cent. provided the 5*l.* per cent. did not in the whole amount to more than the sum of 200*l.* the commissioners directed the assignees to pay the bankrupt 163*l.* his estate amounting to 4000*l.*; but before the assignees had paid it, the bankrupt dies, which was the reason they did not think fit to pay it to the representatives of the bankrupt, without the sanction of the court. Lord Hardwicke was of opinion, that it vested in the bankrupt, and that his representative was entitled.

Under a joint commission, partners cannot have a double allowance, one in respect of the joint, and the other of the separate estate; therefore one allowance only is to be divided between them in respect of their joint and separate estates, according to the proportion which the surpluses of their respective separate estates, and the respective moieties of their joint estates have contributed to the payment of the joint debts.

The commissioners are required, at the request of the bankrupt, to give a true account of the application and disposal of his estate and effects; and to pay the overplus, if any, to the bankrupt himself, or his representatives; and he is also empowered to recover and receive the rest of the debts outstanding.

The overplus directed to be paid to the bankrupt, is only such as shall remain after his debts are fully paid and satisfied; except where such overplus arises by the forfeitures given by the act; in which case, one moiety of the overplus of the forfeitures is given to the crown, and the other to the poor in the hospitals, &c. So strict and so minute were the old acts.

Where the debts have been fully paid, and there is an overplus, consisting of real and personal estate, the personal is first to be applied to payment of interest, on debts carrying interest; and if that is deficient, the real estate must come in aid. But where there is real and personal estate more than sufficient to pay the debts with interest, and the bankrupt is dead, the surplus real estate must be conveyed to his heir, and the personal estate be divided amongst his next of kin.

Bankruptcy does not discharge the bankrupt from the office of overseer of the poor.

Till the bankrupt has obtained his certificate, he is liable to be

sued and arrested by his creditors, though they have come in under the commission; and in that case a court of law will not interpose upon that ground to discharge him: he must apply to the court of Chancery.

A court of law will not discharge him from an execution at the suit even of the petitioning creditor: the proper jurisdiction being the court of Chancery, which may either discharge the bankrupt or supersede the commission; but it would be inconsistent for a court of law to discharge an execution because a commission had been taken out by the creditor, when perhaps the Lord Chancellor might supersede the commission, because he had taken the bankrupt in execution.

Though a creditor of a bankrupt under 20*l.* is excluded from assent or dissent to the certificate, yet as he is affected by the consequence of allowing the certificate, he hath a right to petition, and shew any fraud against allowing the certificate.

No discovery on oath shall entitle the bankrupt to the benefits of this act, unless the commissioners shall, under their hands and seals, certify to the Lord Chancellor that he hath made a full discovery of his estate, and in all things conformed himself; and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same is not a full discovery of all his estate and effects; and unless four parts in five in number and value of creditors, who shall be creditors for not less than 20*l.* and who have proved their debts under the commission, or some person by them authorised thereto, shall sign such certificate, and testify their consent to such allowance and certificate, to the bankrupt's discharge, to be also certified by the commissioners; but the commissioners shall not certify the same, till they have proof by affidavit of such creditors, or of the person by them respectively authorised, signing the said certificate, and of the power by which any person is so authorised (and the letter of attorney of a creditor residing in foreign parts, attested by a notary public, shall be sufficient evidence in such case of such power); which said affidavit, together with such power to sign, shall be laid before the Lord Chancellor with the certificate, in order for allowing the same; and unless the bankrupt make oath that the certificate and consent of the creditors were obtained fairly and without fraud, and unless the certificate shall, after such oath, be allowed and confirmed by the Lord Chancellor, or two of the judges to whom he shall refer it; and any of the creditors shall be allowed to be heard against making the certificate, and against the confirmation of it; nor shall any commissioner sign the certificate, till after four parts in five in number and value of the creditors shall have signed it.

A certificate signed by a creditor who ought not to have been admitted to prove, his debt being contingent, would be irregular.

An executor may sign a bankrupt's certificate, but a person who has a debt in his own right, and another as executor, cannot sign a certificate in two distinct rights; for both are to be considered as his own particular debt.



As where persons proving debts on behalf of others, as executors, guardians, &c. they may sign the certificate; but, said Lord Hardwicke, if they have proved several debts in distinct rights, as where a person has one debt in his own right, and another as executor, &c. he cannot sign in both rights; for that both were to be considered as his own particular debt.

A bankrupt becoming executor of a creditor, may, in that capacity, be entitled to sign his own certificate, In a very remarkable case, the father of the bankrupt was the principal creditor, and sole assignee under his son's commission; but dying intestate, leaving the bankrupt his only child, who thereby became his sole personal representative, and in that capacity the principal creditor under his own commission; he, as such, chose himself assignee, and signed his own certificate, which was afterwards allowed.

Creditors, at their own option, may either sign the certificate or not, as there is no method of compelling them. Every security given to the use of any creditor, to induce him to sign such allowance or certificate, shall be void.

In the construction of this statute, it is held to be perfectly clear (notwithstanding a former exploded determination to the contrary), that it is not to be confined to the case of signing only, but that the case of a security given in consideration of the party's withdrawing a petition preferred by him against it, that the allowance and confirmation thereof by the Lord Chancellor might be obtained, is not only within the true spirit of the act, but also directly within the words of it, which say that several securities given as a consideration to persuade a creditor, "to consent to, or sign the certificate, shall be void."

An insolvent debtor compounding with his creditors, and secretly agreeing to give more to one creditor than the others, to induce him to sign the deed, cannot be compelled to perform such agreement.

If a creditor has taken money for signing a bankrupt's certificate, it may be recovered back in an action for money had and received because of the oppression.

And an agreement to pay money to the assignees of a bankrupt, on his certificate being allowed, though for the benefit of all the creditors, is void.

If some of the bankrupt's creditors are induced by money to sign the certificate, though the bankrupt does not know of it at the time of signing, nor even when he makes the necessary affidavit in order to obtain the allowance by the Chancellor, yet if he knows it before the actual allowance, the certificate is void.

If money is given without the bankrupt's privity, to induce creditors to sign in order to deprive him of the effect of his certificate, and sufficient in number and value have signed, exclusive of those who have taken the money, the certificate shall be valid.

But no bankrupt shall be entitled to such allowance, who hath upon the marriage of any child advanced above the value of 100*l.* unless he prove by his books, or upon his oath, that he had re-

remaining at the time sufficient to pay his full debts; or who hath lost in one day the value of 5*l.* or in the whole the value of 100*l.* in twelve months next before his becoming a bankrupt, in playing at or with cards, dice, tables, tennis, bowls, billiards, shovel-board, cock-fighting, horse-races, dog-matches, foot-races, or other pastime or game, or in bearing a part in the stakes, or by betting; or hath within one year before he became a bankrupt, lost 100*l.* by contracts for stock, or shares of any public funds, where such contract was not to be performed within one week from the making, or where the stock was not to be performed within one week from the making, or where the stock was not actually transferred.

The clause in the 5 *Geo. II. c. 30, s. 12*, in which a bankrupt is excepted from the benefit of his certificate, who hath, upon the marriage of any of his children, given more than 100*l.* unless he hath sufficient to his creditors, is a penal clause, and therefore must be construed strictly, and confined to the children of a bankrupt, and not extend any farther: therefore a bankrupt who had given 1000*l.* portion with his niece, was held by Lord Hardwicke not to be within the act.

But insuring in the lottery is not within the 5 *Geo. II. c. 30, s. 12*, for in the case of *Lewis v. Piercy*, the clause relating to gaming was construed not to extend to the case of insuring in the lottery; and still less, therefore, to that of keeping a lottery-office.

If any person shall fraudulently swear or depose, before the major part of the commissioners, or by affidavit exhibited to them, that a sum of money is due to him from the bankrupt, which shall not be really owing, and shall not in respect of such fictitious debt sign the certificate for such bankrupt's discharge; in such case, unless the bankrupt shall, before the major part of the commissioners, have signed the certificate, by writing signed by him, and delivered to one or more of the commissioners or assignees, disclose the fraud, and object to the reality of such debt, the certificate shall be void, and the bankrupt shall not be entitled to his discharge or allowance.

In allowing the bankrupt's certificate, the Lord Chancellor must be determined by the statutes. A *mandamus* will not lie to compel the allowance, for it is discretionary in the commissioners first, and afterwards in the Lord Chancellor; but this power ought not to be exercised in an arbitrary manner, either by the commissioners, or the Chancellor, either in granting or refusing the certificate; they should be wholly governed by the fairness or fraudulent conduct of the bankrupt.

The statute prohibits the commissioners from signing, till it has been signed by the requisite number of creditors, and to the requisite value of their claims.

As the Chancellor is empowered to exercise a legal discretion in the granting or refusing certificates, so he may also postpone his allowance, whenever the nature of the case appears to require it.

The certificate is often postponed, to give creditors who are proceeding at law, an opportunity of coming under the commission,



for the purpose of assenting or dissenting to it. But this privilege either to abide the commission, or proceed at law, is confined to the common creditors; the petitioning creditor is supposed to have determined his election by taking out the commission, and is not allowed afterwards to proceed at law.

If a creditor is proceeding at law, the bankrupt is entitled to petition to put the creditor to his election, either to abide by the commission and waive the proceeding at law, or relinquish all benefit under it: but whether the creditor can be compelled to elect before a dividend, is a point which seems not perfectly settled.

That the creditor may be enabled to judge how far the estate is likely to be productive, it seems reasonable that he should be put to his election before a dividend has been declared; and indeed the present practice requires either that a dividend should have been declared, or at least that the assignees should have funds sufficient to make one. On the other hand, as it would be cruel to postpone the relief of the bankrupt, where the dividend is not delayed by his fault, it is not usual to make the creditor elect before any dividend is declared; and even before the time that under the statute any dividend could regularly be made.

Where four fifths of the creditors in number and value have signed, and the commissioners do not appear to have been precipitate, new creditors coming in afterwards cannot stay it upon the ground that there are not now, by their coming in, four-fifths in number and value to have signed: but if they would set it aside, they must prove it to have been fraudulently obtained.

The certificate will not be postponed upon the application of one who has not proved a debt, or shewn a reasonable ground for a claim. It has been refused where the demand was unliquidated, and depended upon the statement of a long account; especially if the party claiming would not swear positively that the balance would be in his favour.

Before the allowance, any of the creditors may be heard before the Lord Chancellor (or two judges to whom he may refer the consideration of it,) against the making of the certificate, and against its being confirmed. And this right of being heard in opposition is given to all or any of the creditors. If a creditor's debt is under 20*l.* and he therefore is not competent to sign the certificate, he may oppose it, and those who have already signed, may afterwards object to its being allowed. The Chancellor himself may suspend or finally disallow it, even when no opposition is made by the creditors.

By the 14 *Geo. III. c. 77, s. 59*, and 15 *Geo. III. c. 38, s. 69*, those bankrupts who have conformed to all the laws relating to them, and cannot obtain their discharge, may petition the court of Chancery.

After the certificate is signed by the creditors and commissioners, it shall be laid before the Lord Chancellor, together with the affidavit or affirmation of the creditors signing the same, or the person by them respectively authorized so to do, and also the warrant or

authority to sign, in order for the allowing and confirming thereof; which certificate, upon the bankrupt's making oath, or, being one of the people called Quakers, solemnly affirming, in writing, that the same, and the consent of the creditors thereunto, were obtained fairly and without fraud, may be confirmed by the Lord Chancellor; but any creditor of the bankrupt may, if he thinks fit, petition the Lord Chancellor not to confirm the certificate: on which account the Lord Chancellor gives notice in the Gazette, that, by virtue of the statute 5 G. II. c. 30, the certificate will be allowed and confirmed, as the said act directs, unless cause be shewn to the contrary within twenty-one days from the said advertisement.

And by the 18 G. III. c. 52, s. 76, the Lord Chancellor is empowered to allow the certificate to bankrupts, though not signed by four-fifths of their creditors.

After the allowance of the certificate has been stayed, if sufficient ground for a denial of it is not made out in a reasonable time, the Lord Chancellor will not lock up the certificate for ever, and deprive a man of the liberty the law has given him.

The bankrupt, after allowance of the certificate shall attend, on notice in writing from the assignees, to settle accounts, and shall have 2s. 6d. a-day allowed for attendance; and if he shall neglect or refuse, he shall, on oath made by the assignees before the commissioners, be apprehended and committed to close gaol, by warrant of the said commissioners, till he conform.

No money shall be paid out of the effects for the eating or drinking of the commissioners, or of any other person, nor shall the commissioners have more than 20s. each for each meeting, nor shall any schedule be annexed to the deed of assignment.—Commissioners acting contrary hereto shall be for ever incapable of acting as such.

If by the death of commissioners, or otherwise, it is found necessary to renew the commission, half fees only shall be paid.

All certificates which have been allowed and entered of record, or a true copy of every certificate signed and attested, may be given in evidence in any court of record, and, without farther proof, taken to be a bar and discharge against any action for any debt contracted before the issuing of a commission, unless any creditor of the person who has the certificate can prove it was fraudulently obtained.

If a bankrupt has his certificate, and an action be brought against him afterwards for a debt precedent to the commission, he may plead his certificate, or otherwise he is without relief. A certificate allowed in the life-time of the bankrupt is good, though not confirmed by the Chancellor till after his death; for the operative force of it arises from the consent of the creditors; and when confirmed, it has its effect from the beginning.

But where a legacy has been left to a bankrupt, after the signing of the certificate, and before it was confirmed and allowed, such



legacy has been adjudged to the creditors, as in the case of *Tudway v. Bourne*.

A bankrupt's certificate will discharge him from a judgment obtained after his bankruptcy on a debt due before:

It will also discharge him from a bond for payment of money by instalments, though some of them were not payable till after the bankruptcy, if some of them were due before; for after the first default of payment, the bond became forfeited, and the penalty was the debt at law.

If any bankrupt, who shall have obtained his certificate, shall be taken in execution, or detained in prison on account of any debts owing before he became bankrupt, by reason that judgment was obtained before such certificate was allowed; any one of the judges of the court wherein judgment has been so obtained, on such bankrupt's producing his certificate allowed and confirmed, may order any sheriff or gaoler, who shall have such bankrupt in custody, to discharge him without fee.

Where a person, discharged on an insolvent debtor's act, becomes bankrupt afterwards, his commission will be special, and will only discharge his person, not his future estate and effects.

The bankrupt's certificate does nor discharge him from a bond of indemnity, where the breach happens after the bankruptcy.

Nor will it discharge him from debts which he owes as executor.

The certificate, when allowed, discharges the bankrupt from all debts, both joint and separate, that have, or might have been proved under the commission at the time he became bankrupt: and it generally operates as a discharge both of the person of the bankrupt, and of his future effects. The certificate has no operation till it is allowed.

It discharges a bankrupt from a debt accruing before the act of bankruptcy, though judgment is not obtained till after the certificate is allowed. As where he had given a bail-bond to the sheriff, which was forfeited before the bankruptcy for non-appearance, and an action brought upon this bail-bond, but judgment not obtained till after the certificate allowed. The court held there was a breach, and that the penalty was forfeited, therefore the debt was due, though execution could not be taken out for more than the damages.

If the sureties of a bankrupt pay the debt for him before his bankruptcy, they may come in under the commission; and in that case, whether they prove it or not, his debt to them will be discharged by the certificate. But with respect to the sureties and the creditor, the bankrupt's certificate, though it may discharge him as against the creditor, will not discharge his sureties, who will still remain liable to the principal creditor.

If an executor misapplies the testator's fund, he becomes

debtor to the testator's estate, and the amount of the devastavit is a debt proveable, from which he is discharged by his certificate.

The certificate is a bar to an action brought against the husband for debts due from the wife, *dum sola*, for by the marriage it becomes a debt due from the husband.

In an action of debt for rent, the certificate will be a bar, the assignment of the lease by the commissioners being considered as an assignment by the assent of the lessor, it being understood that all persons are supposed to consent to an act of parliament, by the authority of which the commissioners assign the bankrupt's property; and consequently as the bankrupt has no longer the enjoyment of the thing demised, debt does not lie for the rent.

An attachment for non-payment of money is barred by the certificate: So, where a bankrupt was taken up upon an attachment for not performing an award; and afterwards becoming a bankrupt, obtained his certificate, and moved to be discharged: the court admitted that this was a demand for which debt would lie; and the Act says he shall not be arrested, prosecuted, or impleaded, for any debt due before the bankruptcy. It would therefore be hard to keep the bankrupt in custody, when the duty is discharged; and therefore in this case he must be discharged.

A discharge by the law of one country, will be a discharge in another. If a bankrupt in Ireland becomes a bankrupt, and obtains his certificate, it will operate as a discharge in an action brought here upon a debt arising in Ireland. Thus, on a motion to enter an exoneratur on the bail-piece, it appeared that the defendant had been a bankrupt, and obtained a certificate under the great seal of Ireland. The original demand arose upon a bill of exchange drawn in Ireland, payable by the defendant, who resided there. Lord Mansfield said, it is a general principle, that a discharge by the law of one country will operate as a discharge in another: that he remembered a case in chancery of a *cessio bonorum* in Holland, which is held a discharge in that country, and it had the same effect here. The rule was enlarged, and afterwards made absolute by consent, the counsel giving it up upon the authority of *Burrows v. Jemino*.

But perhaps the extent of such discharge, as whether it will be of the person or effects only, or of both, must be governed by the local law of the place where it arose.

All debts, whether joint or separate, are equally discharged by the certificate, under either a separate or a joint commission. The statutes say nothing about joint or separate debts, or joint or separate commissions, but discharge the bankrupt from all debts due or owing by him before he became a bankrupt; and a joint debt is the debt of each partner, as well as the debt of all the partners jointly.

An action of covenant for non-payment of rent may be brought against a bankrupt, though he has obtained his certificate.



And in the case of *Trueman v. Fenton*, it was observed by the court, that the bankrupt might revive the old debt. A bankrupt is indeed held to be discharged by his certificate from all debts due at the time of the commission; but he may make himself liable on a new promise; otherwise the provision in 5 G. II. c. 30, s. 11, by which every security for the payment of any debt due before the party became bankrupt, as a consideration for signing his certificate, would be totally nugatory.

Paying interest upon a bond, after the bankrupt had obtained his certificate, would, as Lord Mansfield observed, be an acknowledgment that the principal was still due, and he is liable on a new contract.

Or agreeing not to take any dividend or benefit under the commission.

But when a bankrupt is sued for an old debt, thus conscientiously revived, the court will discharge him upon common bail.

It has been doubted whether a promise by a bankrupt to pay when he is able, is not conditional, and whether, in that case, it is not necessary to prove him in circumstances to pay.

The certificate obtained after judgment upon a bail-bond against the bankrupt himself, will not discharge the bail-bond, though it discharged the original debt; for it is a new and distinct cause of action.

Under a joint commission partners are not entitled to a double allowance, one on the joint, and the other on the separate estate; or to more than one allowance to be divided between them in respect of their joint and separate estates, according to the proportion which the surpluses of their respective separate estates, and the respective moieties of their joint estates have contributed to the payment of the joint debts.

A joint commission of bankrupt issued against the petitioner and Tilman Henkell. The joint debts amounted to 22,796*l.* 13*s.* 6*d.* The joint effects to about 5,000*l.* The separate effects of the petitioner amounted to above 30,000*l.* The debts proved under his separate estate were 15,894*l.* but of that sum 15,362*l.* 7*s.* 7*d.* were in fact debts due from the partnership; but as the creditors were joint and several, they thought proper to come in upon the separate estate of the petitioner, as being the most solvent estate. Henkell's separate effects, after paying his separate creditors, were about 1,700*l.* The joint creditors were paid 16*s.* in the pound, in which (supposing the joint effects to be divided into moieties), the petitioner had contributed in the proportion of 12*s.* 6*d.* and Henkell of 3*s.* 6*d.* Under these circumstances, Bate petitioned that the assignees might pay him his allowance of 10*l.* per cent. not exceeding 300*l.* in respect of the separate estate, according to the statute of 5 G. II. c. 30, and that he also might have such allowance in respect of the joint estate as the court should think fit. The first question was, Whether it was possible for the same person to have a double allowance, one in respect of the joint, and the other

of the separate effects? but the Lord Chancellor was clearly of opinion that could not be. But the principal question was, Whether, under the circumstances of this case, Henkell was entitled to any allowance; and if so, whether it was to be a part of the 300*l.* to which the petitioner Bate made claim, or whether the statute intended a distinct allowance of 300*l.* to each partner, when the joint creditors received 15*s.* in the pound. His lordship declared, that the bankrupts were entitled to the sum of 300*l.* being one allowance only of 10*l.* per cent. in respect of their joint and separate estates, and that the same ought to be divided and paid to and between the bankrupts, according to the proportion which the surplus of each of their separate estates, after payment of their respective separate debts, and their respective moieties of their joint estates have contributed to the payment of their joint debts.

The *supersedeas* is a writ issuing under the great seal to supersede the commission. By the statute 5 *Geo. II. c. 30, s. 24*, only one express provision was made for superseding a commission,—that of the petitioning creditor compounding his debt with the bankrupt: but the Lord Chancellor has always exercised a discretionary power in such cases, when the creditors of the bankrupt who have proved agree to supersede the commission; and whenever justice required, either for the sake of creditors, or of the bankrupt himself, that a commission should not be suffered to proceed.

A commission may be superseded for want of a sufficient debt of the petitioning creditor, or for want of sufficient evidence that the party had been a trader, and had committed an act of bankruptcy. It may be superseded because the petitioning creditor was an infant, and therefore incapable of giving the bond to the great seal.

It may be superseded because the party was **not** liable to the bankrupt laws, as being a *feme covert*, &c. or if his debt accrued subsequent to an act of bankruptcy ascertained by a trial at law; or if the commission issued upon a debt barred by the statute of limitations; or if the petitioning creditor had the debtor in execution when the commission issued; or if the commission was fraudulently issued; in which latter case the court will punish the parties concerned by commitment, and by ordering them to pay the costs.

A commission taken out to defeat an execution is not, on that account alone, fraudulent, if there is no collusion in the bankrupt.

A commission may be superseded in order to prevent a prosecution for a felony, innocently committed, in not regularly surrendering to his commission.

It may be superseded by the agreement of the creditors; especially if the actual consent of all of them appears to have been given. Where the consent of all except two was obtained, and



those two could not be found, but the notes on which their debts arose had been delivered up, with receipts upon them, a superseas was ordered, on the condition of procuring an affidavit to verify the signatures to the receipts.

But, in some cases, though all the creditors consent, a superseas will not be granted, if injurious to the bankrupt himself. As where a bankrupt, with the consent of his creditors, who had accepted a composition and released him by deed, applied to supersede the commission, and that he might be empowered to collect in some outstanding debts; the court directed that he should, on giving an indemnification to the assignees, stand in their place to get in the remainder of the debts, but would not supersede the commission, as the superseas would entirely defeat his certificate.

If the commission appears plainly to have been taken out fraudulently and vexatiously, the court will readily supersede it, and order the petitioner's bond to be assigned; which assignment will be conclusive evidence at law of fraud or malice to sustain the action on the bond.

A mere misnomer will not occasion a commission to be superseded, as where a married woman was described in it as a widow.

A general affidavit by the bankrupt, that he is not a bankrupt, will not supersede a commission.

Where the case is doubtful, and the bankrupt out of the kingdom, the court will not supersede the commission on petition, but direct the bankrupt to be tried in an issue.

And sometimes, instead of superseding, or directing an issue, the question has been referred back to the commissioners, for further investigation.

By the 5 G. II. c. 30. s. 44, no commission of bankrupt shall abate by the death of his Majesty; and if it shall be necessary to renew any such commission by the death of the commissioners named in such commission, so that a sufficient number of commissioners shall not be living who can act therein, or for any other purpose, in any such case such commission shall be renewed; and but half the fees usually paid upon granting commissions, shall be paid upon such renewal.

The commissioners under the renewed commission shall continue the proceedings from the stage at which the former ended.

**BAPTISM.** Concerning baptism of infants by laymen, or by women, in particular cases, the following ordinances are in force.—Women, when their time of child-bearing is near at hand, shall have water ready for baptizing the child, in cases of necessity, the form of which baptism shall be: "I crysten thee in the name of the Fader, and of the Sone, and of the Holy Goste." And infants thus baptized, when in imminent danger, shall not be re-baptized; but the priest shall supply afterwards the rest of the ceremony of baptism. And in such cases of extremity, where the child is bap-

tized at home, the water used in baptism shall be either poured into the fire, or carried to the church, to be put into the font; and the vessel shall be burnt, or applied to the uses of the church. And the Rubrick of the Common Prayer gives the following directions concerning baptism. "And also they shall warn them, that without great cause they procure not their children to be baptized at home in their houses. And when great need shall compel them so to do, then baptism shall be administered on this fashion: first let the lawful minister, and them that be present, call upon God for his grace, and say the Lord's Prayer, if the time will suffer; and then the child being named by some one that is present, the said minister shall dip it in the water, or pour water upon it." But Bishop Fleetwood says, the church does not hold lay-baptism to be invalid: and he directs that baptism shall, from indispensable necessity, be had if possible. And he directs it as the sentiment of the church on that point, that lay-baptism be administered when a lawful minister cannot be had, rather than none at all.

Every popish recusant shall within one month next after the birth of any child, cause it to be baptized by a lawful minister in open church; or if it is infirm, to be baptized by a lawful minister in his own house, on pain of 100*l.*; one third to the king, one third to him who should sue, and one third to the poor.

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

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

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

BARON AND FEME, signify in our law husband and wife, and by the law are adjudged but one person.

A man cannot grant lands, &c. to his wife, nor covenant with her; but he may covenant with others for her use, &c. And he may devise to her by will; though a wife cannot devise lands to her husband, being under the power of the husband. And she is so much under his power as to be disabled to contract without his consent; and though she may use his goods, yet she may not dispose of or pawn them; but if she takes them away, it is not felony.

A wife cannot in strictness bind her husband by contract for necessaries, without his assent; but usually if she buy goods for herself, as apparel, &c., or for her family, the contracts are allowed; and the husband is bound to maintain his wife in necessaries. But if he forbids particular persons to trust her, he shall not be charged by them though a prohibition in general, by putting her in the



newspapers, is not a legal notice. If the husband makes the wife allowance for cloaths, &c. which is constantly paid, he shall not be charged; and the husband is not chargeable as on an elopement. In other cases, the necessaries to charge the husband must be according to his degree and estate. As a man is not bound by his wife's contract, without notice and assent, so he is not bound by the wife's receipt for his money.

The husband hath power over the wife's estate by marriage; and where there is no settlement to the contrary, he gaineth a freehold, &c. in her right, if she have fee: he also gaineth a chattel real, as a term of years, &c. which he may grant away in her life-time; but not dispose of by will, if he doth not survive her: and where the wife is out of possession, hath only possibility, or is possessed as executrix, the husband cannot have it. All chattels personal, in possession of the wife in her own right, are the husband's; but if these chattels are things in action, as debts by obligation, &c. the husband shall not have them, unless recovered by him and his wife; or he claim them as administrator to his wife, if he survives her. The husband shall be tenant by the courtesy of the wife's land after her death, where issue born between them: and the wife shall have dower in her husband's lands after the death of her husband, also her necessary apparel, &c. And if she survives her husband she shall have her term for years, or other chattels real again, if the husband hath not altered the property: and rents, advowsons, &c. will come to the wife again, if she survives: if the husband charges the chattel real of his wife with rent, &c. it will not bind her, if she survives him.

Agreements between husband and wife, before marriage, are generally extinguished by the marriage: but if a man in consideration of marriage promise to leave her worth 500*l.* this is no duty in the life of the husband, and therefore not released or extinguished. A woman sole indebted takes husband; it is then the debt of husband and wife, and both to be sued; but after the death of the wife, the husband is not liable, except there be a judgment against both during the coverture. If there be a judgment in debt against a feme sole, who marries and dies; the baron is not chargeable; *contra* where the judgment against her, is had upon *sci. fa.* against baron and feme. A woman married 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.

A wife may not bring any action for wrong to her, without her husband; and when they join in an action, damage is to be laid only to the husband. But by the custom of London, a feme covert trading in the city as a sole merchant, may sue and be sued as a feme sole. A wife in other places cannot generally be sued without the husband. For trespass and scandalous words, &c. of or against the wife, the husband and wife must sue and be sued; and execution awarded against him. But for her own offence a wife may be indicted, without her husband, and be fined, &c. And

she may sue and be sued in court christian, without her husband.

The husband is to join in action for battery to the wife; but in all cases where the feme shall not have the thing recovered, but the husband only, he alone is to bring the action. A husband is bound for the appearance of his wife, where a subpoena is served on her. The husband only to be imprisoned for want of bail, to action brought for debt of the wife *dum sola*; for he must find bail for her and himself. But if action is brought against a single woman, who pending the action marries; the plaintiff may proceed to judgment, and execution against her.

If a man threaten to beat or kill his wife, she may make him find surety of the peace; but she cannot be a witness against her husband, nor he against her, except in cases of high treason. If the husband aliens the wife's lands, she may recover them after his death by *cui in vita*. Baron and feme acknowledge a deed to be enrolled, or a statute, &c. this will not bind the feme; because she is not examined by writ, to bar her, as on levying a fine.

If a lease be made to baron and feme, the baron cannot devise the term; the feme will be in by survivorship, before the devise. A husband may make leases of his wife's lands for twenty-one years, or three lives, &c. and be good; if she be a party, and the rent is reserved to husband and wife, and the heirs of the wife. He is not to alien her land, but by fine wherein she joins.

A feme having estate in dower, in tail, &c. of lands of the husband, making discontinuance, or suffering a recovery by covin, it shall be void, and the heir enter. Feme covert convict of recusancy, are disabled to be executors to their husbands, and liable to forfeitures.

BASTARD, one who is born of any woman not married, so that his father is not known by order of the law. A bastard, by our English law, is one, that is not only begotten, but born out of lawful matrimony. As all children born before matrimony are bastards, so are all children born so long after the death of the husband, that by the usual course of gestation they could not be begotten by him.—If a man dies, and his widow soon after marries again, and a child is born within such time, as that by the course of nature it might have been the child of either husband, in this case he is said to be more than ordinarily legitimate: for, on his arriving at years of discretion, he may chuse which of the fathers he pleases.

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

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

If a bastard die without issue, though the land cannot descend to any heir on the part of the father, yet to the heir on the part of



the mother (being no bastard) it may; because he is of the blood of the mother, but he has no father.

If a bastard die intestate, leaving neither widow nor issue, the king is entitled to the personality.

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

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

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

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

If a single woman that is likely to be chargeable to the parish, declares herself with child, and that the same is likely to be born a bastard, and to be chargeable to the parish: or any single woman who shall be delivered of a bastard child likely to be chargeable, who shall before a justice of peace charge any person with having gotten her with child, such justice, on application by the overseers, may cause such putative father to be apprehended and imprisoned, unless he gives security to indemnify the parish; or to appear at the next sessions, and to abide the order that shall be made there. But no justice of the peace has power to send for any woman before she be delivered, or sooner than one month

after to be examined concerning her pregnancy; nor shall compel her to answer any questions relating thereto. It is left to the discretion of the justices what degree of punishment shall be inflicted on the mother and reputed father of a bastard child, who are empowered to fix the rate of its support, and to charge the reputed father or mother, as they shall see fit, with the payment of such money weekly, or otherwise; and if the party so charged neglects or refuses to comply therewith, they are to be committed to the common gaol until payment is made, or sufficient security given for their compliance; or to appear at the next quarter sessions of the peace, to be holden of the county where the parties reside. Every lewd woman which shall have any bastard child which may be chargeable to the parish, the justices of the peace shall commit such woman to the house of correction, there to be punished, and set on work during the term of one whole year; and if she shall afterwards (soon after) offend again, then to be committed to the said house of correction as aforesaid, and there to remain until she put in sufficient securities for her good behaviour not to offend so again. But she may avoid the punishments assigned by this act, if she discharge the parish of keeping the bastard. If the putative father, or the mother of a bastard child run away out of the parish and leave the child upon the charge of the parish where it is born, the churchwardens and overseers of the poor of such parish are empowered, in case they leave behind them any goods or effects, to seize upon so much of their effects: or if lands, so much of their annual rents or profits thereof, as shall be ordained by any two justices, towards the discharge of the parish for the bringing up and providing for such bastard child; and if such father returns, though 14 years after, yet an order to fix the child on him is good, for there is no statute of limitation in these cases.

By 13 *Geo. 3. c. 82.* It is enacted, That no hospital or place shall be established, used, or appropriated, or continue to be used or appropriated for the public reception of pregnant women, under public or private support, in any parish, &c. within that part of Great Britain called England, unless a license shall be first obtained from the justices of the peace in quarter sessions, which shall entitle the person to whom it is granted, to keep one house, and no more, for such purpose. And over the door of every such house or hospital, shall be affixed an inscription in large letters, in the following words, viz. Licensed for the public reception of pregnant women, pursuant to an act of parliament passed in the 13th year of the reign of king George the Third. And the affixing and keeping such inscription shall be a condition in every licence. No bastard child or children born in such hospital or place, shall be legally settled, or entitled to any relief from the parish wherein the hospital shall be situated, but shall follow the mother's settlement and immediately gain a settlement where the mother was last legally settled. If the parish where the mother is settled is within twenty miles of the hospital in which she is delivered, the charges of removing her and the bastard child shall be defrayed by such parish, which



charges are to be regulated by any justice of the peace in the said parish, who has a power of levying the same on refusal of payment. But an appeal lies to the quarter sessions within four months, and the determination there shall be final. The parish officers of such parish where the mother and bastard child is settled, have a power to apprehend the reputed father, and to punish the lewd mother in the same manner as if the child was born in their parish. In cases where the mother's settlement cannot be ascertained, the law remains the same as before respecting the settlement of such bastard children. [That is to say, the parish where such child is born must take care of it.] The manager or superintendant of such hospital is required to take all pregnant women, who apply for admission, before some justice of the peace, previous to her admission into his hospital, unless the woman's state of health will not permit it; and the justice of peace shall examine her upon oath, whether she is married or single. And if such pregnant woman shall not be able at the time of her admission to go before a justice in order to be examined, as soon as such woman shall be sufficiently recovered she shall be taken and examined as was before directed. And the owner or keeper of such hospital shall enter the examination in a book to be kept for that purpose, and it shall be signed by the justice before whom it is taken. If such woman produce an affidavit sworn by her before any justice of the peace for the county, &c. wherein such hospital is situated, of her condition, whether it be married or single, she shall not be compellable to go before a justice of the peace, but such affidavit shall be filed at the hospital. Four days at the least before such woman is discharged, the master of the hospital shall give notice in writing to the overseers or churchwardens of the parish, of such delivery, and such parish officers are required to attend at the hospital, and to convey the woman before some justice of the peace of the county, &c. where such birth shall happen, who shall examine the woman on oath relative to her last legal settlement, which shall be certified in writing. If the woman is not in a condition to be taken out of the hospital, the overseers or churchwardens shall wait until she be sufficiently recovered. No woman shall be kept a longer time than six weeks after delivery in such hospital. Every wilful neglect of the directions laid down in this act, subjects the keeper, owner, or manager of such house or hospital, to the penalty of 50*l.* and overseers or churchwardens wilfully neglecting, forfeit 10*l.*

**BASTARD EIGNE.** When a man hath a bastard son, and afterwards marries the mother, and has by her a legitimate son, the latter is described, in the language of the law, as a *mulier*, or *mulier puisne*, which terms is taken from the legal denomination given to the woman, who before marriage is called *concubina*, and after marriage *mulier*. This *mulier* is legitimate, whilst the eldest son is a bastard, or *bastard eigne*. If, on the death of the father, the bastard enters upon his land, and enjoys it to his death, and dies seised thereof, whereby the inheritance descends to his issue; in this case the *mulier puisne*, and all other heirs, (though minors,

feme-coverts, or under any incapacity whatsoever) are totally barred of their right. And this as a punishment on the mulier for his negligence in not entering during the bastard's life, and evicting him. And also because the law will not suffer a man to be bastardized after his death, who entered as heir, and died seised, and so passed for legitimate in his life-time. Further, because the canon law (following the civil) allowed such *bastard eigne* to be legitimate, on the subsequent marriage of his mother: and therefore the laws of England (though they would not admit either the civil or canon law to rule the inheritance of this kingdom, yet) paid such a regard to a person thus peculiarly circumstanced, and after the land had descended to his issue, they would not unravel the matter again, and suffer his estate to be shaken. But this indulgence was shewn to no other kind of bastard; for if the mother never was married to the father, such bastard could have no colourable title at all. If a bastard eigne, so possessing himself of his father's estate at his death, invites the mulier, his brother, to visit him or to hunt upon the land, this is no interruption of the possession of the bastard, because he came by his consent, so that the coming on the lands could be no trespass; but if the mulier, uninvited, comes upon the ground, and cuts down a tree, or digs the soil, or takes the profits, these are interruptions, and may amount to an entry in law. Or if the mulier puts his beasts into the grounds, or directs a stranger to do so, such acts amount to an entry, without being accompanied with any verbal claim.

BATTERY is a trespass committed by one man upon another *vi et armis et contra pacem*, &c. and is punishable by action and indictment; if by indictment, the offender shall be fined to the King; and if by action of assault and battery, the party shall recover costs and damages.

Action of trespass will lie as well before as after the indictment; and the offender shall have a two-fold punishment, be punished to the King, and the party. The defendant in strictness of law, is to pay a fine to the king, and damages to the party: and in battery, &c. the court, on view, may increase the damages.

To lay hands gently upon another, not in anger, is no battery to ground an action; the law will not presume any damage.

If a man be beaten by another, he may return it in his defence; and plead the other's battery occasioned by his own assault; also one may justify beating another who assaults his wife, child, father, &c. But a husband may correct his wife; a parent chastise his child, within age; a master his servant, or apprentice; a school-master his scholars; a gaoler his prisoners, &c. and be no battery.

A man may beat another to defend his goods, or possession of his estate; but if he kills him, it is felony. If the life of any one be in danger by beating, &c. any one may beat him that offers the violence.

In assault and battery one may be found guilty of the assault, and excused the battery. Assaults on Members of Parliament; Privy Counsellors; or officers, in execution of their offices, are punished beyond common assaults, by statute.



**BAWDY-HOUSE**, 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 public peace, but by drawing together dissolute and debauched persons, and promoting quarrels, but also in respect to its tendency to corrupt the manners of the people.

Any persons keeping a bawdy-house, gaming-house, or other disorderly house are punishable, not only with fine and imprisonment, but also with sufficient infamous punishment, as to the court in discretion shall seem proper. 28 Geo. 2. c. 19, a lodger, who keeps only a single room, for the use of bawdry, is indictable for keeping a bawdy house.

**BEADLE**, is a parish officer, appointed by the vestry. His business is to give notice to the parishioners when and where a vestry is appointed to be held by the churchwardens;—to attend such vestry when met, and to execute its orders. He is also to assist the churchwardens, overseers, and constables, in the discharge of their respective duties, and generally to execute all the orders and business of the vestry and of the parish.

**BEHAVIOUR**. For what offences persons may be required to find sureties for their good behaviour.

Those who are of ill-fame, or common disturbers of the peace: those who are accused, or guilty of any of the offences herein after specified, may be required, by one justice, to enter into recognizance, with sureties or without them, according to the discretion of the justice, to be of the good behaviour; and upon refusal may be committed.

Affrayers.

Ale-houses. —Tipplers in them, or public-houses.

{ Helpers to convey away the putative fathers of  
bastard-children.

Bastardy. { Reputed parents of bastard-children; but it must  
be for the mother's second offence, after con-  
viction for the first.

Barretry. Common barretors.

A man was indicted for a common barretor, and after he was acquitted he threatened the witnesses; whereupon he was bound to the good behaviour.

Bawdry. { Frequenters of, and keepers of bawdy-houses.  
{ Whoremongers, and common whores.

Conspiracy. { One that conspires to take away another's life,  
and shall endeavour it.

Cheaters and  
Cozeners. { By cards, dice, or any other game, or games,  
whatsoever.

Conies. { Hunting, killing, or stealing them, either in park  
or warren.

Drunkard. { Convicted by one justice, or head officer, or one  
witness upon oath.

- Felony. } Acquitted, or convicted and pardoned, if of an ill fame.
- Fish. } Those convicted of stealing of fish, or destroying the pond.
- Gaming. } Such as frequent gaming-houses, and have no visible means of livelihood.
- Hawks. } Convicted of taking hawks, or their eggs, out of the grounds of another person, may be bound for seven years.
- Hue and cry. — Raising it without a cause.
- Hunters. — In parks and warrens.
- Idle persons. } Living well, and having no visible way to support themselves.
- Justice of peace. } Those who misbehave themselves before him or any other officer in the execution of justice: those who speak contemptible words of him, or abuse his warrants: those who delude his authority by complaint without prosecution. A man may be bound to the good behaviour for saying the justices of peace do not understand the statutes.
- Libels, or scandalous letters. } Writers of them: those who contrive, procure, or publish libels, whether true or false, either against the living or the dead, by writings, words, pictures, or any other signs of reproach.
- Misbehaviour. } Of any kind whatsoever; which is left to the justices' discretion.
- Murderers, Manslayers. } Such who are like to commit either of these offences.
- Night-walkers. } Those who are suspected to steal, or to commit any misdemeanor by night.
- Peace. — Those who break it in any manner whatsoever.
- Poison — Mingling it with corn, and giving it to poultry.
- Preachers. } Disturbing them in their duty; but now they must enter into a recognizance, with two sureties in 50*l.* to appear at the next sessions, and upon conviction there must forfeit 20*l.*
- Quarrels. } Those who are guilty of them, or breaking the peace.
- Repute. — Those of evil-repute.
- Riot. } Those who are found in the very act; but if the riot is over, then the enquiry must be by a jury.
- Robbery, Suspicion. } Those who lie in wait, or attempt to rob another. } Persons suspected to lie in wait to rob, &c.
- Witness. } One, being a material witness for the king, refusing to give evidence, &c.
- A woman bound to the behaviour for suborning of witnesses
- Writers. — Of obscene ribaldry.



A justice of peace has a general power by the statute to bind persons to their good behaviour in several instances, which are not therein mentioned, nor perhaps have yet been thought of, and that this is to be regulated by their best discretions upon parity of reasoning, and instances Mr. Dalton's granting the good behaviour against one who had mingled ratsbane with corn, and cast the same among his neighbour's fowls; and that this was held good cause by the whole bench.

The surety of the behaviour may be granted at the suit of divers persons of credit, to provide for the safety of many; whereas the surety of the peace is usually granted at the suit of one to preserve the peace chiefly towards one; and that surety of behaviour is grantable in several cases where surety of the peace is not.

The surety of the peace against noblemen is to be had by supplicavit out of chancery, not by justices.

It was holden by the court, that if a man be bound to the good behaviour by justices of the peace, for refusing to obey their order, they ought not to grant a supersedeas, because the party was not bound in that court, upon stat. 21 Jac. 1. c. 8. But they would grant a habeas-corpus, and, if they saw cause, to discharge him.

H. was a vicar, and for saying in his sermon, that devourers of church lands never thrived to the third generation, he was bound to his good behaviour.

A justice cannot bind to the good behaviour upon a general information, or upon such to commit a man for not finding sureties.

If a justice for want of sureties for good behaviour, commit without cause, it is false imprisonment. To call a mayor a fool, in the execution of his office, is a breach of good behaviour: and so it is to threaten witnesses.

The justice may certify the recognizance at the next sessions, or forfeit 10*l.* and if the party doth not appear, the recognizance itself, with the cause of the forfeiture, must be certified in the Exchequer, that process may be awarded against the offender.

Bad words spoken to a magistrate, not in the execution of his office, are not indictable. But for such little offences, *contra bonos mores*, the law has made a proper provision, and that is by requiring surety of the peace, or for the good behaviour, and by committing the offender, if he refuseth to find such sureties; or if he speak such words in court, they may proceed in a summary way against him, by fining him for a contempt of the court, and committing him until he hath paid the fine.

Abusing of officers in executing their office, as justice of peace, constable, or other officer of the peace; as a justice seeth a man break the peace, and doth charge him to keep the peace, who answers he will not: words of contempt against a justice of peace, though he be not executing his office.

A constable was bound to his good behaviour for arresting one

in the church-yard on a Sunday, after a certiorari out of the King's Bench shewn.

So is he guilty of it who chargeth one with felony before a justice, and will not prosecute, or who abuses a supersedeas of the peace to a wrong end.

If one be bound to the peace, and afterwards do threaten J. S. to his face, and in his presence, to kill or beat him, this is a breach of the peace, and a forfeiture of his recognizance; otherwise if he threaten in his absence, unless he lie in wait, and then it is.

*N. B.*—The surety for the good behaviour may be forfeited by the extraordinary number of people which the recognizor hath attending upon him; or wearing more, or other weapons, than he before usually did, or are meet for his degree or estate; or by using vigorous or terrible words, or threatening, tending or inciting to the breach of the peace; or demeaning himself in his behaviour, company, or gesture, or doing any thing which shall tend to the breach of the peace; or to put the people in dread or fear.

But to a forfeiture of a recognizance of the peace, there must be an actual breach of the peace by an affray, battery, or the like.

A man bound to his good behaviour is arrested on suspicion of felony, and escapes; that is a misbehaviour, though it does not appear that any felony was committed.

Procuring another to break the peace is a forfeiture of the recognizance for the peace.

Words which amount to a breach of the good behaviour ought to be such as tend to the breach of the peace, or otherwise it is not a breach of the good behaviour, by the opinion of Montague, Chief Justice, and Haughton and Chamberlain, Justices.

**BENEFIT OF CLERGY.** In the dark ages of ignorance and superstition, when the Romish clergy lorded it over kingdoms and states under the disguise of religion, these insatiable tyrants not only grasped at the possession of all the landed property in the kingdom, but likewise endeavoured to exempt every member of their body from the cognizance of the temporal courts of judicature, though guilty of the most atrocious crimes. But though they possessed great influence over the crown, and were supported in every lawless attempt by the usurpations of the bishops of Rome, yet they never could obtain a total exemption from secular jurisdiction. The method of proceeding with clerical delinquents, as settled in the reign of Henry VI. was, to arraign them before the temporal court; and the prisoner must either then plead the benefit of his clergy, by way of declinatory plea: or after conviction, by way of arresting judgment. This latter way was most usually practised, as it was more to the satisfaction of the court to have the crime previously ascertained by confession, or the verdict of a jury; and also as it was more ad-



vantageous to the prisoner himself, who, if acquitted, needed not to make use of the plea of his clergy: if upon such trial a clerk was convicted, no punishment could be inflicted on him, but he must be delivered over to the ordinary, to be dealt with according to the ecclesiastical canons, which adjudged him to a new trial before the bishop of the diocese, or his deputy; which court, after the parade of mock justice, usually acquitted him. In the early periods of our constitution, none but such as had *habitum et tonsuram clericalem* were indulged in this plea; but afterwards a much greater latitude was given to persons claiming it; for every one who could read was admitted to it. Such a qualification being considered in those barbarous days as a proof of great learning; such therefore were styled lay-clerks. But as knowledge grew to be more generally diffused, it was found that more laymen than divines were admitted to the *privilegium clericale*; it was therefore thought proper to make a distinction between learned laymen, and real clerks in orders; and the statute 4 *Hen. VII. c. 13*, devises, that no person once admitted to the benefit of clergy shall be allowed to claim it a second time, unless he produces his orders: and effectually to distinguish the persons of clerks and laymen, all of the latter who were allowed this privilege of clergy, were directed to be burnt with a hot iron in the brawn of the left thumb for all offences then clergyable, which continues to be the law at this day. By the conviction, a person having had his clergy, forfeits all his goods that he had at the time of conviction, notwithstanding his burning in the hand. Yet by burning in the hand he is put into a capacity of purchasing and retaining other goods. And presently upon his burning in the hand, he ought to be restored to the possession of his lands, and from thenceforth to enjoy the profits thereof. And it seems that it restores the party to his credit, and consequently enables him to be a good witness. And it is holden, that after a man is admitted to his clergy, it is actionable to call him felon; because his offence being pardoned by the statute, all the infamy and other consequences of it are purged away. A subsequent statute further enacts, that lords of parliament and peers of the realm, may have the benefit of clergy, equivalent to that of the clergy, for the first offence, although they cannot read, and without being burnt in the hand, for all offences then clergyable to commoners. It is now in the power of the judge to recommit lay-offenders convicted of clergyable offences to prison, for any time not exceeding a year; but this benefit of clergy does not extend to women; for by an express act of parliament it is directed that women convicted of simple larcenies under the value of 10*s.* shall be burnt in the hand, whipped, stocked, or imprisoned for any time not exceeding a year, (for they were not called upon to read); and by a subsequent statute, a woman being convicted of an offence for which a man may have his clergy, shall suffer the same punishment that a man shall suffer that has the benefit of his clergy allowed; that is, shall be burnt in the hand, and further kept in

prison as the court shall see fit, not exceeding one year; but the benefit of this statute can be pleaded only once. Such was the law until the beginning of the present century; when the wisdom of the legislature perceiving the unfitness of allowing an indulgence to the learned and well educated who commit offences, which was denied to the illiterate, enacted, (A. D. 1706) that the benefit of clergy shall be granted to all such whose crimes admit of it, without making the ability to read the condition of obtaining it. But it being soon found that the law holding forth such extended lenity, did not sufficiently deter evil disposed persons from committing the lower degrees of felony; to curb such spirit more effectually, without having recourse to the rigour of capital punishments, it was enacted, that when any person shall be convicted of any larceny, either great or petit, and shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand, or whipping; the court in their discretion, instead of such burning in the hand, or whipping, may direct such offenders to be transported to America for seven years; and if they return within that time, it shall be felony without benefit of clergy. A very masterly expounder of the law remarks, that the conjunction *and* here used, seems to render the sentence of transportation not properly to extend to women, or to persons convicted of petit larceny, which was not a clergyable offence. Upon the whole then it appears, that women cannot claim the benefit of their clergy, but the benefit of the statute, which is equivalent to it. Before the passing of which law, women were entitled to no mitigations of the punishment for felonious offences. And now a woman who hath once been admitted to plead the benefit of the statute, as well as a man, not being within holy orders, who hath once been admitted to his clergy, shall not be allowed the same plea a second time, upon being found guilty of a second felonious offence. It is now decided that a peeress guilty of a felony to which the benefit of the statute extends, shall be discharged without burning in the hand.

**BENEFIT CLUBS.** By *Geo. 33. c. 54.* any number of persons may form themselves into a society, and raise among themselves a fund for their mutual benefit, and may make rules and impose fines; but the rules of such societies are to be exhibited to the justices in quarter sessions, who may annul or confirm them: the rules are to be signed by the clerk of the peace, and deposited with him: and no society is to be within the meaning of this act till their rules have been confirmed. No confirmed rule to be altered but at a general meeting of the society, and the alterations of the rules are to be subject to the review of the quarter sessions. The societies may appoint officers, and securities are to be given for offices of trust if required: and every such bond from treasurers or trustees is to be given to the clerk of the peace; and from other persons to the treasurers or trustees: which bonds are not chargeable with stamp duty. Powers of standing committees to be declared in the rules of the society; and if particular ones, entered in a book, and all committees are to be controulable by the society. Treasurers or



trustees are to lay out the surplus of the contributions either in private securities to be approved of, or in the public funds, and to bring the proceeds to account for the use of the society. Treasurers and trustees are to render accounts, and pay over balances, and in case of neglect, application may be made in a summary way by petition to the court of chancery or exchequer, or great sessions. And no fee is to be taken for any proceedings in such courts. Executors and administrators are to pay money due to the societies before any other debt. The effects of societies to be vested in the treasurers or trustees for the time being, who may bring and defend actions. Societies are to declare the purpose of their establishment before the confirmation of their rules by the quarter sessions, and may inflict penalties for misapplication of money. The consent of five-sixths at a general meeting is necessary for the dissolution of societies, and the stock is not to be divisible, but for the general purposes of the societies. Their rules are to be entered into a book, and received in evidence. Societies may also receive donations in support of their stock. When members think themselves aggrieved, two justices on complaint may summon the officers, and on hearing of the parties, they make such order as shall seem just, which is not removable by certiorari. No member of any such society producing a certificate thereof, shall be removable from where he resides till actually chargeable to the parish; but the signing of such certificate must be authenticated by the oath of a witness before a justice of peace. And on complaint of parish officers, any justice may summon persons bringing such certificates, to be examined, and make oath of their settlement, and copies of the examination are to be given to the parties, which shall exempt them from future examination. Justices may declare, by an order in writing, the place of settlement, of persons so examined, without issuing a warrant of removal, and copies of such orders, and of examinations, are to be returned to the parish officers, and persons aggrieved herein may appeal to the quarter sessions. No person, who shall reside in any parish, under this act, shall thereby require a settlement; nor for paying rates; nor any apprentice or servant to such persons. Bastards are to have their mother's settlement. Charges of maintaining or removing residents under this act to be reimbursed by the parish to which the parties belong.

By 35 Geo. 3. c. 111, societies established before 33 Geo. 3. c. 54. may exhibit their rules for confirmation at any quarter sessions before or immediately after Michaelmas 1796. Governors of institutions for the relief of the widows, orphans, and families of the clergy, and others in distressed circumstances, may frame rules, and present them for confirmation. Institutions where rules shall be confirmed, may appoint treasurers, and be entitled to the benefit of this act.

**BIGAMY.** The crime of bigamy consists in a man having two wives living at the same time, or a woman having two husbands. Its signification in our law is exactly synonymous to polygamy; or having a plurality of husbands or wives at one time. All sub-

sequent marriages during the lifetime of the first husband or wife, is simply void, and a mere nullity by the canon law. Anciently the temporal courts did not interfere to punish even the violation of matrimonial rights; and adultery, which in most countries of Europe is treated as a crime against the state, was not considered in England as an offence punishable by the magistrate, but left to the correction of ecclesiastical censure. At length, however, the violation of conjugal duty, accompanied by the circumstance of an open attack upon the order of society by a second marriage, was, by the statute 21 James I. c. 2. (A. D. 1604,) made a subject of criminal cognizance before the magistrate, and made felony under the mitigation of the benefit of clergy. Before the passing of which act, bigamy was triable by a bishop's certificate; but if the prisoner, to avoid the charge, pleaded, that the second espousals were null and void, because he had a former wife living, the special bigamy was not to be tried by the bishop's certificate. "If any person within his majesty's dominions of England and Wales, being married, shall marry any person, the former husband or wife being alive; such offence shall be felony." But a man may claim the benefit of his clergy; or a woman may pray the benefit of the statute of William the Third. This act makes an exception to five cases, in which such second marriage, though in the first three it is void, is yet no felony. 1. Where either party hath been continually abroad for seven years; whether the party in England hath notice of the other's being living or not. 2. Where either party hath been absent from the other seven years, within this kingdom; and the remaining party hath had no notice of the other's being alive within that time. 3. Where there is a divorce or separation *a mensa et thoro* by sentence of the ecclesiastical court. 4. Where the first marriage is declared absolutely void by any such sentence, and the parties loosed *a vinculo*, or, 5. Where either of the parties was under the age of consent at the time of the first marriage; for in such a case the first marriage was voidable by disagreement of either party; which this second marriage clearly amounts to. But it is the opinion of Sir William Blackstone, that if at the age of consent the parties had agreed to the marriage, which completes the contract, and is indeed the real marriage; and afterwards one of them should marry again; such second marriage would be within the meaning and penalties of the act. If the first marriage be beyond sea, and the latter in England, the party may be indicted here, because the latter marriage makes the offence: but if the first marriage was in England, and the latter beyond sea, it seemeth that the offender cannot be indicted here; because the offence was not within the kingdom. In an indictment of a man for bigamy, the first wife shall not be admitted as an evidence against her husband, because she is the true wife; but the second may, because she is indeed no wife at all, and so, *vice versa*, of a second husband.—A libel was admitted in the spiritual court against a woman *causa jactitationis maritaggi*, the woman prayed a prohibition to the ecclesiastical court, and the suggestion



was, that this person who now libelled against her in a cause of jactitation, had been indicted at the Old Bailey for marrying her, he having a wife then living; that he was thereupon convicted, and had judgment to be burnt in the hand; that therefore the ecclesiastical court had no right to proceed. On which a prohibition was granted.

**BILLS OF EXCHANGE.** Merchants' notes are in nature of letters of credit passing between one correspondent and another in this form, "pray pay to J. S. or order, such a sum, witness my hand, J. N." Now if the correspondent accept the note he becomes chargeable in a special action on the custom.

In this custom there are four things considerable; first, the bill; secondly, the acceptance; thirdly, the protest; fourthly, the indorsement.

The bill is in nature of a letter, desiring the correspondent to pay so much money either at sight, or, as they term it, at single, double, or treble usance, which is commonly at one, two, or three months, to be computed from the date of the bill.

Though regularly there ought to be three persons concerned in a bill of exchange, yet there may be only two; as if A. draw in this manner, "pray, pay to me, or my order, value received by myself."

The acceptance is giving credit to the bill so far as to make the acceptor liable, and to trust for repayment to his correspondent.

In the case of two joint traders, the acceptance of the one will bind the other; but if ten merchants employ one factor, and he draw a bill upon them all, and one accept it, this shall only bind him and not the rest.

A small matter amounts to an acceptance, as saying, "leave the bill with me, and I will accept it," for it is giving credit to the bill, and hindering the protest; but if the merchant say, "leave the bill with me, and I will look over my accounts between the drawer and me, and call to-morrow, and accordingly the bill shall be accepted." This is no acceptance, because it depends upon the balance of accounts.

An acceptance may be qualified, as to pay half in money, and half in bills. So to pay when goods sent by the drawer are sold: but he to whom the bill is due may refuse such acceptance, and protest the bill so as to charge the drawer. The proof of the acceptance is sufficient acknowledgment on the part of the acceptor, who must be supposed to know the hand of his correspondent; therefore in an action against the acceptor, the plaintiff shall not be put to prove the hand of the drawer; however, proof of the acceptance will not be conclusive evidence against the acceptor, if he can prove the contrary.

The protest is made before a notary-public in case of non-acceptance or non-payment, to whose protestation all foreign courts give credit; and the protest is evidence that the bill is not paid; but in England they must shew the bill itself as well as the protest, because the whole declaration must be proved.

When the bill is returned protested, the party that draws the bill is obliged to answer the money and damages, or to give security to answer the same beyond sea, within double the time the first bill run for.

In case of foreign bills of exchange the custom is, that three days are allowed for payment, and if not paid on the last day, the party ought to protest the bill and return it, and if he do not, the drawer will not be chargeable; but if the last of the three days be a Sunday, or great holiday, he ought to demand the money on the second day, and if not paid, protest it on the same day, otherwise it will be at his own peril.

If the indorsee accept any part of the money from the acceptor, he cannot afterwards resort to the drawer for the remainder of the money, unless he give timely notice to the drawer that the bill is not duly paid: for where a man takes a part of the money only, and does not apprise the drawer that the whole is not paid, he gives a new credit for the remainder. But where timely notice is given that the bill is not duly paid, the receiving part of the money from an acceptor or indorser, will not discharge the drawer or other indorsers: for it is for their advantage that as much should be received from others as may be.

If a bill be left with a merchant to accept, he to whom it is payable, in case it be lost, is to request the merchant to give him a note for the payment according to the time limited in the bill; otherwise there must be two protests, one for non-payment, the other for non-acceptance.

If the drawee indorse the bill over to another, the receiver has not only the original credit of the drawer at stake, and that of the acceptor of the bill, if accepted, but also of the indorser, and he may have an action against either; but a bill of exchange cannot be assigned over for a payment in part, so as to subject the party to several actions.

By the 3 and 4 *An. c. 9.* All notes in writing, that shall be made and signed by any person, whereby such person promises to pay to another or his order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be, by virtue thereof, due and payable to such person to whom the same is made payable; and every note made payable to any person or his order, shall be assignable or indorsable over, and the person to whom such sum of money is by such note made payable, may maintain an action for the same; and any person to whom such note is indorsed may maintain his action for the same, either against the person who signed such note, or against him that indorsed it; and in every such action the plaintiff shall recover his damages and costs.

There are no prescribed forms of these promissory notes, and therefore whatever imports an absolute promise to pay will be sufficient; as a promise to be accountable to J. S. or order. But a promise to pay on an uncertain contingency, depending perhaps on the will of the drawer, is not within the act, because it will not answer the intent; nor within the words which import an absolute



promise to pay; and therefore a promise to pay upon his marriage is not good; but a promise to pay on a return of a ship has been holden good, because it respects trade. So a promise to pay, or do another act, has been holden not to be within the act; as a promise to pay, or deliver the body of J. S. So a promise to pay, if his brother did not, is not within the act, for the same reason of uncertainty. So a promise to pay money and do some other thing, *ex. gr.* deliver a horse, is not within the statute. So a promise to pay three hundred pounds to B. or order, in three good East India bonds, is not a note within the statute. But a promise to pay on the death of another, as that is a contingency which must happen, will be good.

A note payable to an infant, when he should come of age, viz. June 12, 1750, was holden to be within statute.

A bill payable to a man's order is payable to himself, and he may bring an action, averring he made no order.

A note payable to a feme sole or order, who marries, can only be indorsed by the husband.

So likewise such note may be indorsed by an executor or administrator.

In an action by the indorsee against the drawer, upon non-assumpsit, the plaintiff proved the drawer's hand and that when the note with the indorsement was shewn to the indorsor, he acknowledged it was his hand-writing, but this was holden not sufficient to charge a third person.

There is a distinction between a note payable to B. or order, and to B. or bearer; in the first case in an action against the indorsor the plaintiff must prove a demand on the drawer, but not in the last, for there the indorsor is in nature of an original drawer. In the first case, if the indorsee give credit to the drawer, without notice to the indorsor, it will discharge him: so receiving part of the money from the drawer will for ever discharge the indorsor; for by such receipt the indorsee has made election to have his money from the drawer.

A cash note on a banker, payable to the ship, Fortune, or bearer, is a good and negotiable bill of exchange, and the bearer may maintain an action on it in his own name: or he may recover on it in an action for money had and received to his use. But in either case he must prove that he got the bill fairly, and *bona fide*.

If the indorsor have paid part of the money, that will dispense with the necessity of proving a demand on the drawer.

In an action against the indorsor, the plaintiff need not prove the drawer's hand, for if it be a forged bill, yet the indorsor is liable.

The indorsee must give a reasonable notice to the indorsor in convenient time, upon the default of payment by the drawer; but proof of making enquiry after defendant, who could not be found, will be sufficient to excuse the giving such notice, unless such defendant can prove he was to be found.

In an action against the indorsor of a note of hand, where the

note was due the fifth, and there was no demand on the drawer till the eighth, and no notice to the indorser till the nineteenth: Mr. Justice Denison thought the plaintiff had not made use of due diligence in demanding the money, or in giving notice to the indorser, and said there were no days of grace on a note as there are on a bill of exchange; but the jury said it was commonly understood that there were three days of grace, and therefore thought the demand was made in time: but the judge said the law was otherwise, and directed them to find for the defendant.

In an action against the indorser, lord Raymond would not allow the defendant to give in evidence that the plaintiff desired him to indorse the note, to enable him to bring an action against the drawer, but declared he would not sue the defendant. But where the action was brought by the drawee against the drawer, the defendant was let in to shew it was delivered as an escrow, *viz.* as a reward in case he procured the defendant to be restored to an office, which it being proved he did not effect, there was a verdict for the defendant.

And it seems a reasonable distinction which has been taken between an action between the parties themselves, in which case evidence may be given to impeach the promise, and an action by or against a third person, *viz.* an indorsee or an acceptor.

Where the defendant borrowed money of J. S. who lent it knowingly to game with, and assigned the note for a valuable consideration to the plaintiff, who had no notice, yet it was holden void by 9 *Ann.* c. 14.

Though it be sufficient for the plaintiff in an action on a note of hand to prove the note to have been given by the defendant, yet the defendant will be at liberty to shew it was given on an illegal consideration, and so avoid the lien of it.

As the intent of the 3 and 4 *Ann.* was to put promissory notes upon the same footing as inland bills of exchange; all that has been before said in regard to promissory notes is applicable to such inland bills. However the analogy between promissory notes and bills of exchange should be attended to, in order the better to understand the cases. Whilst the promissory note continues in its original shape, there is none: but when the note is indorsed the resemblance begins; for then it is an order to pay the money to the indorsee, and this is the very definition of a bill of exchange: therefore the indorsee, before he brings an action against the indorser of a promissory note, ought to demand the money of the drawer: but it must be made on the drawee before an action is brought against the indorser of a bill of exchange; and no inquiry need be made after the drawer.

It may be proper further to take notice, that 9 and 10 *W.* 3. c. 17. gives power of protesting any inland bill of exchange of five pounds or upwards, (in which is acknowledged and expressed the value to be received;) but this act has no effect, unless the party to whom the bill was drawn, accept it by under-writing; therefore by the same, power is given in case the party refuses to accept it,



but proviso that no protest shall be necessary, unless the bill be drawn for twenty pounds or upwards.

It has been holden upon these statutes, that in declaring upon an inland bill a protest need not be set forth, as it must upon a foreign bill, for the statute does not take away the plaintiff's action for want of a protest, but only deprives him of damages or interest.

But if any damages accrue to the drawer for want of a protest, they shall be borne by him to whom the bill is made, and if, in such case, the damage amount to the value of the bill, there shall be no recovery.

It is not necessary to set forth the custom in an action upon a bill of exchange, for *lex mercatoria est lex terræ*; and if he set it forth, and do not bring his case within it, yet if by the law merchant he have right, the setting forth the custom shall be rejected as surplusage.

If A. write his name on the back of the bill, and send it to J. S. to get it accepted, which is done accordingly, A. may, notwithstanding, bring an action against the acceptor, for J. S. has it in his power to act either as servant or assignee; for he may witness his election by filling up the blank over the name, to receive it as indorsee, or by omitting it, act only as servant.

**BILL OF RIGHTS.** This important act, on which depends the liberty of the subject, and all that Britons can hold dear, was originally the declaration delivered by the lords and commons to the Prince and Princess of Orange, February 13th, 1688. It was afterwards enacted in parliament, when they became king and queen; and is as follows:

Whereas the lords spiritual and temporal, and commons, assembled at Westminster, representing all the estates of the people of the realm, did, upon the 13th of February, 1688, present unto their majesties, then Prince and Princess of Orange, a declaration, containing, that,

The said lords spiritual and temporal, and commons, being assembled in a full and free representation of this nation, for vindicating their ancient rights and liberties, declare,

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

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

That the commission for erecting the late court of commissioners of ecclesiastical causes, and other commissions and courts of a like nature, are illegal and pernicious.

That levying money for or to the use of the crown by pretence of prerogative without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

That it is the right of the subjects to petition the king; and all commitments and prosecutions for such petitioning, are illegal.

That the raising or keeping a standing army within the kingdom

in time of peace, unless it be with consent of parliament, is against law.

That the subjects who are protestants may have arms for their defence suitable to their conditions, and as allowed by law.

That election of members of parliament ought to be free.

That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That jurors ought to be duly impanelled and returned, and jurors who pass upon men in high treason ought to be freeholders.

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

And for redress of all grievances, and for the amendment, strengthening and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings to the prejudice of the people in any of the said premises, ought in anywise to be drawn hereafter into consequence or example.

All and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, and adjudged, and taken to be; and all the particulars aforesaid shall be firmly holden as they are expressed in the said declaration; and all officers shall serve their majesties according to the same in all times to come.

No dispensation by *non obstante* of any statute shall be allowed, except a dispensation be allowed in such statute; and except in such cases as shall be specially provided for during this session of parliament.

No charter granted before the 23d of October, 1689, shall be invalidated by this act, but shall remain of the same force as if this act had never been made.

Lastly, these liberties were again asserted at the commencement of the present century in the act of settlement, whereby the crown was limited to his present majesty's illustrious house; and some new provisions were added at the same time, for better securing our religion, laws, and liberties, which the statute declares to be "the birth-right of the people of England," according to the ancient doctrine of the common law.

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



**BILLINGSGATE-MARKET**, is to be kept every day, and toll is appointed by the statute: all persons buying fish in this market, may sell the same in any other market by retail; none but fishmongers shall sell them in shops. If any person shall buy any quantity of fish at Billingsgate, to be divided into shares amongst fishmongers or others, a penalty of 20*l.* And fish imported by foreigners, (except protestant inhabitants of England,) shall be imported in any foreign vessel, not being wholly English property, under penalty of forfeiting the vessel and fish. Provided that nothing be construed to prohibit the importation of anchovies, sturgeon, botarjo, or caviar, nor selling of mackarel, before and after divine service, of a Sunday.

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

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

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

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

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

**BLACK ACT**, is so called, having been occasioned by some devastations committed near Waltham in Hants, by persons in disguise, or with their faces blacked; to prevent which it is enacted, by 31 *Geo. 2. c. 42.* that persons hunting armed and disguised, and killing or stealing deer, or robbing warrens, or stealing fish out of any river, &c. or any person unlawfully hunting in his majesty's

forests, or breaking down the head of any fish-pond, or killing, &c. of cattle, or cutting down trees, or setting fire to house, barn, or wood, or shooting at any person, or sending anonymous letters, or letters signed with a fictitious name, demanding money, &c. or rescuing such offenders; are guilty of felony without benefit of clergy.

**BLASPHEMY.** Every person bred in, or professing the Christian religion, and who shall by writing, printing, teaching, or advised speaking, deny any one of the Persons of the Trinity to be God; or assert that there are more Gods than one; or deny the Christian religion to be true; or the Holy Scriptures to be of Divine authority, and be convicted thereof by indictment or information at Westminster, or at the assizes, shall be disabled to have any office, and that office which he hath shall be void.

If convicted a second time, he shall be disabled to sue in any Court, or to be a guardian, or executor, or administrator, and be incapable of any legacy, or gift, or of any office; and be committed for three years without bail.

Conviction must be by oath of two credible witnesses. The information for words spoken must be upon oath before a Justice of the peace within four days after spoken, and the prosecution must be within three months after the information. But if the convicted person for the first offence shall, within four months after his conviction acknowledge and renounce the same in that court where he was convicted, he shall be discharged from the said penalties.

One T. was prosecuted for uttering divers blasphemous expressions, execrable to hear, of our blessed Saviour and Redeemer, Jesus Christ, and that religion is a cheat, and that he neither feared God, the devil, or man. On his trial, Hale said, that such kind of blasphemous words were not only an offence to God and religion, but a crime against the laws, state and government; for to say religion is a cheat, is to dissolve all obligations whereby civil societies are preserved, and that Christianity is part of the laws of England, and therefore to reproach the Christian is to speak in subversion of the law. He was sentenced to stand in the pillory in three several places, to pay one thousand marks, and to find sureties for his good behaviour during his life.

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

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

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



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

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

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

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

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

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

A man entering into a bond conditioned to leave his intended wife 1000*l.* the marriage is had, the husband mortgages his estate and dies; the bond, though void in law, being extinguished by the marriage, is good in equity. Decreed that the wife may redeem and hold the land till she has satisfied her debts.

An uncle gave his niece 1200*l.* the niece married, but antecedent to the marriage, the father took a bond from the intended husband, to pay him 200*l.* in case the daughter should happen to die without issue male, leaving her husband: the daughter did die without issue male; and her husband survived. The father thereupon sued the husband at law upon this bond: the husband brought his bill in equity to be relieved against this bond, and had a decree accordingly; for it appearing that no money was paid, nor consideration for entering into it, the court took it to be in nature of a marriage-brokers bond; and thereupon ordered it to be delivered up.

A guardian, at the request of one going to marry his ward, gave in an account of the estate to the intended husband, and secured to him the balance by three several bonds: and the intended husband gave a bond to the guardian, to release all accounts to him after the marriage. The marriage was had: the guardian paid the balance: but the husband gave no release, but sued for an account and relief against the bond. And the guardian was ordered to answer the bill: for the account was made when the intended husband had no title; no release is given; and the pursuit is fresh. And by lord ch. j. Cowper: Wherever a father, mother, or guardian, insists upon private gain, or security for it, and obtains it of the intended husband, it shall be set aside. For marriage-brokers agreements have been often condemned in equity. And a bond to give money if such a marriage could be obtained is ill. And so is a bond to forgive a sum of money. For such bonds, although good at law, yet being introductive of infinite mischief, have upon great consideration been condemned in equity. The defendant on a treaty of marriage for his daughter with the plaintiff signed a writing, comprising the terms of an agreement; and afterwards de-

signing to elude the force thereof, and get loose from it, ordered his daughter to inveigle the plaintiff out of the writing, and then marry him, which she accordingly did: the husband was relieved on the point of fraud, and the father compelled to abide by his agreement.

An husband giving a bond to his wife for payment of a sum of money, in case she survive him; and after becoming bankrupt, the wife shall claim no dividend out of his estate by virtue of such bond. But the lord chancellor observed, that a bottomree bond entered into, and the ship returning safe before the dividend actually made, she should receive her share of the dividend, though the bond was contingent at first, because the contingency was then at an end. But if a feme-covert agree to sell her inheritance, on condition that part of the money arising from the land sold shall be to her own proper use; and such proportion is vested in the hands of trustees, such money shall not be liable to the husband's debts, even though the wife afterwards agrees that it should be liable.

If an heir is sued on the bond debt of his ancestor in which he is bound, and he pays the money, the executor shall reimburse him as far as there are personal assets of the testator's come to his hands, if it is not otherwise ordered by the will. If a man dies indebted by bond, and seised in fee of diverse lands, part of which he devises to one, and other part he permits to descend to his heir, (not mentioning them in his will) the lands permitted to descend shall be first applied to pay the bond debt. And the reason is, because the applying the devised lands to pay the bond debts, would disappoint the will, which equity will not permit if it can be avoided: whereas it in no way disappoints the will to say, that the lands not mentioned should be in the first place liable to pay the debts. But it seems it would be otherwise if the testator had devised his lands to his heir at law; for though such devise were void as to the purpose of making the heir take otherwise than by descent; yet it shews the testator's intent, that the heir should have the land; and therefore it seems, that the lands devised to one, and the other lands devised to the heir at law, should in such case contribute in proportion to pay the bond debts. Also for the above-mentioned reason, it seems that the lands permitted to descend to the heir at law, and not mentioned in the will, shall be applied to pay the bond debts, before a specific legacy; lest otherwise the testator's intention should be disappointed.

There is a great difference between assigning a breach in an action of covenant, and in debt upon bond conditioned for the performance of covenants, because in covenant all is recoverable in damages, and those will be what the party can prove he has actually sustained, but in the other case a breach is a forfeiture of the whole bond; therefore in covenant it is sufficient to assign the breach in the words of the covenant, but that would not do in debt upon bond for the performance of covenants.

And this leads me to take notice of another difference between covenant and debt, viz. That at common law in debt upon bond, with condition to perform covenants, the plaintiff could assign only



a single breach, but in covenant he might assign as many breaches as he pleased; but now by the 8 and 9 W. 3. c. 11. the plaintiff may in debt on bond, or on a penal sum for performance of covenants, assign as many breaches as he shall think fit, and the jury shall assess not only such damages and costs as have been heretofore usually done in such cases, but also damages for such of the said breaches as the plaintiff shall prove to have been broken, and like judgment shall be entered on such verdict as has been heretofore usually done on such like occasions; and if judgment be given for the plaintiff on demurrer, or by confession or *nihil dicit*, the plaintiff upon the roll may suggest as many breaches as he shall think fit, upon which shall be a writ of enquiry, &c. and in case the defendant after judgment, and before execution, shall pay into court such damages and costs, a stay of execution shall be entered on record; or if by execution the plaintiff shall be paid and satisfied, all such demands, costs, and charges, the body, land, or goods of the defendant, shall be thereupon discharged, which shall likewise be entered upon record; but in each case such judgment shall remain as a further security to answer the plaintiff such damages as may be sustained for further breach of any covenant in the same deed, whereupon the plaintiff may have a *sci. fa.* and so *toties quoties*.

Where a person undertakes by bond for doing an act, it is not sufficient for him to shew that he has done all in his power, for the condition is for his benefit, and if not performed he is subject to this exception, viz. Where the condition is prevented from being performed by the act of God, as by the death of the party before the day, or by the act of law; as if I gave a bond conditioned to do an act, and a statute afterwards made it unlawful; or by the act of the obligee himself, for it would be unjust that he should take advantage of his own wrong.

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

BOOKS. By the 54 Geo. III. c. 156, the 8 of Ann. c. 19, is so far confirmed, as relates to the delivery of 11 copies of every Book, shall be declared to the Warehouse-keeper of the Company of Stationers, for the use of the British Musuem; Sion College; the Bodleian Library, at Oxford; the public library, at Cambridge: the library of the Faculty of Advocates, at Edinburgh; the libraries of the 4 Universities of Scotland; Trinity College, Dublin: under the penalty of the value of the said purchased copies, and five pounds for each copy not so delivered, together with full cost of suit; but so much of the said act of the 8 of Queen Ann, as requires that any copy or copies of any book or books, which shall be printed or published, or re-printed and published with additions,

shall be delivered to the Stationers' Company is by this act repealed.

No copies of a second or subsequent edition, without additions or alterations to be demanded, the additions to be printed and delivered separate.

The copy of every book that shall be demanded by the British Museum, shall be delivered of the best paper on which such work shall be printed.

Instead of copy-right for 14 years, and contingently for 14 more, authors and their assigns shall have 28 years copyright, in their works, and for the residue of their life.

Booksellers, &c. in any part of the United Kingdom, or British dominions, who shall print, re-print, or import any such book without the consent of the author, or authors, or other proprietor, or proprietors, shall be liable to an action for damages, and shall also forfeit the books to the proprietor, and 3d. per sheet, with double costs of suit.

The title of all books shall be entered at Stationer's Hall, within one month of the publication, in the register book of the Stationers' Company, for which entry 2s. shall be paid, and 1s. for the inspection of the register; and if such entry be not made within the second calendar month, the publisher shall forfeit the sum of five pounds; together with eleven times the price at which such book shall be sold or advertised, and in the case of magazines, reviews, or other periodical publications, it shall be sufficient to make such entry in the register of the said Company, within one month, next after the publication of the first number or volume of such magazine, &c. The failure of such entry not to affect in any manner the copyright.

The warehousekeeper of Stationers' Hall to transmit to the librarians, lists of books entered, and to call on the publisher for the copies demanded.

Publishers may deliver such books at the library. Authors of books already published, now living, to have the benefit of the extension of copyright. and if living at the end of 28 years, the sole right of publication shall be settled during life.

Actions or informations for any offence against this act, to be sued and commenced within 12 months, or the same to be void and of no effect.

**BOROUGH ENGLISH.** Notwithstanding the Norman conquest subverted the Saxon laws and customs, and introduced the feudal system in their stead, yet there still remain in several parts of the kingdom traces of the Saxon regulations respecting inheritance and possession of lands. Tenure in burgage seems to have been derived from so remote an original as the times of the Saxons. One of the most remarkable customs peculiar to tenements so held in ancient language, is called Borough English, which gives the inheritance to the youngest son, and so in an inverted succession up to the eldest. And by the same tenure, the widow is endowed of all her husband's tenements instead of the third part, which she



was entitled to by the established laws of descent founded on the common law. This is called her free bench. The reason of which seems to be, that in these boroughs the eldest sons were introduced into the trade of their father, and therefore being provided for out of their father's goods in his life-time, were able to subsist of themselves without any provision in land; and therefore the lands descend to the youngest son, he being in most danger of being left destitute, and consequently the wife who was entrusted with the care of the younger children, had the whole during her life.

And it is generally believed that anciently the lord of a fee claimed a right of enjoying his tenant's wife on the nuptial night, and though such licentious abuse of power and authority is not expressly authenticated by any writer of undoubted credit, yet the gross treatment which the inferior order of people received from those of high rank, may serve to corroborate the fact as it is now supported, especially as it cannot be doubted to have prevailed in Scotland, where it was styled *mercheta*, or *marcheta*, and was there abolished about the year 1060; and it has been conjectured that the peculiar nature of burgage tenure, which is also styled borough English, and gives the inheritance in succession to the youngest son instead of the eldest, was founded on the established right thus claimed by the lord, the legitimacy of the younger children being on that account less liable to impeachment.

**BREWERS.** By 24 Geo. 3. st. 2. c. 41. brewers of strong and small beer, are to take out annual licenses from the officers of excise, and are subject to many regulations under the excise laws, The 27 Geo. 3. c. 12, settles the duty on beer and ale. By 32 Geo. 3. c. 8. s. 1. common brewers must not sell beer in less quantities than  $4\frac{1}{2}$  gallons.

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

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

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

The foregoing duties are drawn back on exportation; and semi-

elliptical tiles, for the sole purpose of draining wet or marshy lands, are exempted from the above duties.

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

**BRIDGES.** Public bridges which are of general conveniency, are of common right to be repaired by the inhabitants of that county in which they lie. Where a person makes a bridge for the common good of the king's subjects, he is not bound to repair it.

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

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

Indictments for not repairing bridges will not lie, but in a case of common bridges on highways, though they will lie for a bridge on a common footway. The defendants to an indictment, for not repairing a bridge, must not only shew, that they are not bound to repair the whole, or any part of the bridge; but also shew, what other persons are bound to repair the same.

By 1 *Ann, stat. 1. c. 18.* the quarter-session, upon presentment that a bridge is out of repair, may assess every town and parish; the money to be levied by the constables, and paid to the high constables, who are to remit it to the treasurers appointed by the justices. Persons refusing to collect or pay the money, forfeit 40*s.* treasurers paying money without order of sessions to forfeit 5*l.* collectors of the rate to be allowed three-pence in the pound, inhabitants deemed good witnesses, and no certiorari to be allowed. By 12 *Geo. 2. c. 29,* no money shall be expended in the repair of bridges without the presentment of the grand jury. By 14 *Geo. 2. c. 33.* justices at the quarter-sessions may purchase an acre of land for the building or enlarging of county bridges. By 43 *Geo. 3. c. 59.* the surveyors of county bridges are empowered to get materials for the repair of bridges, in the same manner as surveyors of highways, under 13 *Geo. 3. c. 78.* and the quarter-sessions may widen and improve or alter the situation of county bridges, on presentment of their insufficiency. Tools and materials provided by the quarter-sessions are vested in the surveyor; and the inhabitants of counties may sue for damages done to bridges in the name of the surveyor. No bridge erected in any county by private persons, shall be deemed a county bridge, to be repaired by the inhabitants, unless built in a substantial manner, under the direction of the county surveyor and the quarter-sessions. But this act is not to extend to bridges repaired by tenure.

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

Brokers are to be annually licensed in London, by the lord



mayor and aldermen : if any persons shall act as brokers, without being thus licensed and admitted, they shall forfeit the sum of 500*l.* and persons employing them 50*l.* And brokers are to register contracts, &c. under the like penalty : also they shall not deal for themselves on pain of forfeiting 200*l.* These are called Exchange Brokers.

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

**BULLION.** Persons having unlawful bullion shall be committed to gaol by one justice for six months. It is one justice, or wardens of the company of Goldsmiths, &c. within the bills of mortality, and two justices in any town or place.

Two justices may grant a warrant for a constable to search any persons' houses suspected to have unlawful bullion, and to break open doors, boxes, &c. to search for and discover the same.

Persons apprehending clippers, washers, counterfeiters, and filers of the current coin of this kingdom, shall have forty pounds paid them within one month after conviction, or certificate from Judge or justices before whom convicted.

Persons guilty convicting two, shall be pardoned ; and an apprentice making a discovery, shall be made a freeman.

**BURGAGE TENURE.** See **BOROUGH ENGLISH.**

**BURGLARY,** the breaking and entering the mansion-house of another in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not. But there must be a breaking and entry, to complete this offence.

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

Every entrance into a house by trespass is not a breaking in this case ; for there must be an actual breaking. If the door of a mansion should stand open, and the thief enter, this is not a breaking : or if the window of an house be open, and a thief with a hook or other instrument, should draw out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house ; but if the thief should break the glass of the window, and with a hook or other instrument draw out some of the goods of the owner, this is a burglary, for there is an actual breaking of the house.

The mansion-house, does not only include the dwelling-house, but also the out-houses that are parcel thereof, though not under

the same roof, or joining contiguous to it; but if they be far remote from the dwelling-house, and not so near it, as to be reasonably esteemed parcel thereof, then the breaking is not burglary.

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

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

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

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

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

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

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

And further, any person who shall apprehend any one guilty of burglary, and prosecute him to conviction, shall have a certificate without fee, to be made out and delivered before the end of the assizes, under the hand of the judge, certifying the conviction, and in what parish the burglary was committed, and that the burglar was taken by the person or persons claiming the reward; and if any dispute should arise between the parties claiming, the judge shall, by such certificate, direct the same to be paid and distributed among them, as to him shall seem just and reasonable; and on tendering such certificate to the sheriff, on demand made, he shall pay to the person or persons so entitled the sum of 40*l.* without any deduction. Such certificate shall be inrolled by the clerk of



the peace of the county in which it shall be granted, for which he shall have 1*s.* And the said certificate may be once assigned over; and the original proprietor or assignee of the same, shall by virtue thereof, be discharged from all manner of parish and ward-offices, within the parish and ward where the felony was committed.

**BUTCHERS.** There are some good laws made for the better regulation, and preventing the abuses committed by butchers.

Butcher selling swine's flesh measled, or dead of the murrain, on conviction shall be amerced the first time; the second, put in the pillory; third, fined and imprisoned; fourth, shall forswear the town.

Butcher killing or selling victuals on the Lord's Day shall forfeit 6*s.* 8*d.* being convicted by view of justice, confession, or two witnesses, before one justice; to be levied by distress, &c. a third part to the informer, the rest to the poor.

If a butcher buy fat cattle, and sell them again alive, he shall forfeit them. And if he shall buy fat cattle, and sell them again alive to another butcher in London, or Westminster, or within ten miles thereof, the seller shall forfeit the value of such cattle; one moiety to the king, the other to the informer.

Killing calves to sell under five weeks old, forfeit 6*s.* 8*d.* and bullock, steer or heifer under two years old.

This act of 22 and 23 *Car.* 2. was revived in 1 *Jac.* 2. and afterwards continued by another act in the 4 and 5 of *King William* and *Queen Mary*; and by another in the 11 and 12 of *K. W.* 3. and so further continued by an act made in the 5th of *Q. Anne*, which was since explained by another act in the 7th of the same queen, by which butchers were allowed to sell to one another, calves, sheep, or lambs dead, notwithstanding the laws formerly in force against that practice.

Butcher exercising the mystery of a tanner, forfeits 6*s.* 8*d.* per day; one third to the king, the other to the prosecutor, and the other to the city, borough, town, or lord of the liberty where the offence is committed; prosecution at quarter-sessions.

Butcher gashing any hide, forfeits 1*s.* 8*d.* for every hide, to be divided as above. Butcher watering of hides, except in June, July, or August, or putting them to sale being putrified, forfeits 3*s.* 4*d.* a hide, as before.

Butcher is not to sell his goods at unreasonable rates, but for a moderate profit, on pain of forfeiting double the value.

Butchers conspiring not to sell but at prices agreed on; the first offence is 10*l.* to the king; and if not paid within six days after conviction, must have twenty days imprisonment; second offence 20*l.* and if not paid, then the pillory; the third offence 40*l.* and if not paid, &c. lose one ear.

**BUTTER.** By 36 *G. III. c.* 76. every cooper making vessels for the packing of butter, shall make them of seasoned wood, and tight; and shall make no others but tubs, firkins, and half firkins. The tub shall be capable of containing eighty-four pounds of butter, and not less; and shall not of itself weigh less than eleven pounds,

nor more than fifteen. The firkin shall be capable of containing fifty-six pounds, and not less; and shall not weigh less than seven pounds, nor more than eleven. The half firkin shall be capable of containing twenty-eight pounds, and not less; and shall weigh not less than four pounds, nor more than six, under the penalty of forfeiting 10s. for every vessel made contrary to the above directions. And every cooper shall brand his christian and surname on the outside of the bottom of each vessel, under the penalty of 10s. Every farmer, and other person, who shall pack up butter for sale, shall pack it in vessels made and marked as aforesaid; and when the same is fully seasoned in water, shall on the bottom, on the inside, and on the top on the outside, brand his christian and surname at length, and shall also brand, both on the top and bouge of the vessel, the weight of the same: and to prevent any of the staves being changed, shall burn both his christian and surname in two separate places across the bouge thereof, under the penalty of forfeiting 5*l*.

By 38 *Geo. 3. c. 78.* Factors buying or selling butter in vessels not legally marked, shall forfeit 20s. and dealers, having in their possession butter not legally marked, are to forfeit 10s. recoverable as under the 36 *Geo. 3. c. 76.*

Every farmer, or other person, who shall pack butter for sale, shall pack in every tub eighty-four pounds avoirdupoise net, and not less; in every firkin fifty-six pounds net, and not less; and in every half firkin twenty-eight pounds net, and not less; and shall thereon imprint both his christian and surname, under pain of forfeiting 5*l*.

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

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

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

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

BUYING and SELLING, a transferring of property from one person to another, in consideration of some price or recompence. On an agreement for goods, the vendee cannot carry them away without payment, unless the vendor agree to trust him. But if any part of the price be laid down, or any portion of the goods delivered by way of earnest, the vendee may recover the goods by action, as well as the vendor may the price of them. By 29 *C. 2. c. 3.* no contract for the sale of goods, to the value of 10*l*. or upwards,



shall be valid, unless the payment or delivery be performed, or unless some note in writing be made and signed by the party, or his agent. But if a vendee, after a bargain is struck, tender the money, and the vendor refuse it, the property is absolutely vested in the vendee.

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

A bounty of 2s. 4 $\frac{1}{2}$ d. is allowed upon every hundred weight of British cordage exported as merchandize to foreign parts; but nothing in this act to extend the bounties to cordage manufactured from old cables, ropes, or cordage, commonly called twice layed cordage.

No bounty to be paid if made from American hemp, nor for less quantity than three tons weight.

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

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

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

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If a person take hire for carrying goods, although he be not a



common carrier, he may nevertheless be charged upon a special assumpsit; for where hire is taken a promise is implied; and where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them on account of the hire, and the carrier can be no loser, as he may recover against the hundred.

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

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

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

But he must prove either that such notice was stuck up in a conspicuous part of his office when the owner brought his goods, or that it was advertised in a newspaper which he was accustomed to read. Coach owners, therefore, are not liable for injuries, which passengers may sustain from inevitable accidents; as from the overturning of the coach from horses taking fright, provided there be no negligence in the driver; but it is otherwise if there should have been negligence or misconduct on the part of the driver.

A carrier who undertakes for hire to carry goods, is bound to deliver them at all events, unless damaged and destroyed by the act of God, or the king's enemies; and if any accident, however inevitable, happen through the intervention of human means, a carrier becomes responsible.

Trustees appointed by several acts of parliament for the repairing the highways through England, or any five of them, may cause engines to be erected at any of their turnpikes, and by writing under their hands may cause all carriages passing the turnpikes to be weighed with their loading, and may demand and take over and above the toll already granted 20s. for every hundred weight above 6000 pound weight. The money to be applied to the mending the highways.

The same remedy is given by distress, &c. as for the other toll.

If any person driving any cart, dray, or waggon, in the streets of London and Westminster, Southwark, and other streets and lanes within the bills of mortality, shall ride upon such cart, &c. not having some other person on foot to guide the same, such offender being convicted before the alderman of the ward, or a justice of peace by oath of one witness, shall forfeit 10s. to be levied by distress, &c. one moiety to the informer, the other to the poor; in default of payment, to be sent to the house of correction for three days.

CASE, action on the, (see ACTION.)

CATTLE, by the 3 and 4 *Ed. 6. c. 19.* no person shall buy any ox, steer, runt, or cow, &c. and sell the same again alive, in the same market, or fair, on pain of forfeiting double the value thereof, half to the king, and half to him that shall sue. This is the only act in force against forestalling, ingrossing, and regrating.

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

Any person, who shall unlawfully and maliciously kill, maim, or wound any cattle, shall be guilty of felony, without benefit of clergy; and the hundred shall be answerable for the damages, not exceeding 20*l.* And horses, mares, and colts, are included in the word cattle. Every person, who shall apprehend and prosecute to conviction any offender, shall have 10*l.* reward; to be paid by the sheriff within a month, on his producing a certificate from the judge. To prevent the stealing of horses, &c. for their skin, provides that all persons keeping a slaughter-house for cattle not killed for butcher's meat, shall take out licenses, be subject to an inspector, and only slaughter at certain times.

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

The entering a caveat, being at the instance of the party, is only for the benefit of the ordinary, that he may do no wrong; it is a cautionary act for his better information, to which the temporal courts have no manner of regard; therefore, if after a caveat entered, the ordinary should grant administration, or probate of a will, it is not void by our law; it is true it is void by the canon law, but our law takes no notice of a caveat.

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

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

In particular cases, the court will use the discretion to grant a certiorari, as if the defendant be of good character, or if the prosecution be malicious, or attended with oppressive circumstances.

The courts of chancery and king's bench may award a certiorari to remove the proceeding from any inferior courts, whether they be of ancient, or newly created jurisdiction, unless the statute or



charter which creates them, exempts them from such jurisdiction.

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

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

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

Principal challenge to the polls, is where cause is shewn, which if found true, stands sufficient of itself, without leaving any thing to the triers; as if the juror be under the age of twenty-one, it is a good cause of challenge.

Challenge to the polls for favour, is when neither party can take any principal challenge; but shews causes of favor, as that the juror is a fellow-servant with either party.

In cases of high treason, and misprision of high treason, the prisoner shall have his peremptory challenge to the number of thirty-five. But with regard to petit treason, murder, and other felonies, the 22 *Hen. 8. c.14.* continues in force, which takes away the peremptory challenge of more than twenty.

*Challenge to fight.* Though a challenge to fight be not an actual breach of the peace; yet, since it tends to provoke others to break it, is an indictable offence, and punishable by fine and imprisonment. And if a challenge arise on account of any money won at gaming, or if any assault or affray happen upon such account, the offender shall forfeit all his estate to the crown, and shall suffer two years imprisonment.

**CHAMPARTY**, or **CHAMPERTY**, is the unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gain; both the champartor, and he who consents thereunto, shall be imprisoned three years, and fine at the king's pleasure.

**CHANCELLOR and CHANCERY.** He that bears the magistracy, is called the lord high chancellor of England. The Lord Chancellor and Keeper had one and the same power, and therefore since that statute there cannot be a Lord Chancellor and Lord Keeper at the same time; and when seals came in use he had always the custody of the king's great seal, so that his office is cre-

ated by the mere delivery of the king's great seal into his custody ; whereby he becomes without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord. He is a privy counsellor by his office, and prolocutor of the house of lords by prescription. To him belongs the appointment of all the justices of the peace throughout the kingdom ; he is a visitor in right of the king, of all hospitals and colleges of the king's foundation ; and patron of all the king's livings, under the value of twenty marks a year in the king's books. He is a general guardian of all infants, idiots, and lunatics ; and has the general superintendance of all charitable uses in the kingdom. And all this, over and above the vast and extensive jurisdiction which he exerciseth in his judicial capacity in the court of chancery. All other justices in this kingdom are tied to the law, but the chancellor hath the king's absolute power to moderate the written law, governing his judgment by the law of nature and conscience.

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

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

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

**CHATTELS**. A man cannot bequeath by will any of those goods or chattels which he has jointly with another ; for if he should bequeath his portion thereof to a third person, yet the survivor who had those goods or chattels jointly with another, shall have that portion so bequeathed against the legatee.

It is usual in wills to devise all the household stuff. By which words, plate about the house, and not for ornament passes. But



books, cattle, cloaths, coaches, carts, waggons, corn, and any thing fixed to the freehold will not pass thereby. A devise of all his goods, chattels, and household goods, in and about his house, will not pass money in the house. And Lord Hardwicke decreed that a devise of jewels, plate, pictures, medals, and furniture, did not pass a library of books under the word furniture. Also it has been decreed in chancery on a devise by a man to his wife of all his personal estate at a place called W. whatever should be there at the time of his death should pass, such as coaches, horses, &c. the personal estate being fluctuating and varying until the time of the testator's death. But where a man devised all his goods, chattels, household stuff, and other things which then were, and should be in his house at the time of his death, and some time after died, leaving about 255*l.* in ready money in the house, it was decreed this ready money did not pass. For by the words, other things, should be intended things of like nature and species with those before mentioned.

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

Changing corn by a miller, and returning bad corn in the stead, is punishable by indictment, being an offence against the public. But selling beer short of the measure, is not indictable as a cheat. Neither is the selling of gum of one denomination for that of another. Nor selling wrought gold, as and for gold of the true standard; the offender not being a goldsmith.

The distinction laid down as proper to be attended to in all cases of this kind, is this: that in such impositions and deceits, where common prudence may guard persons against their suffering from them, the offence is not indictable; but the party is left to his civil remedy for redress of the injury done him; but where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive, as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable.

As there are frauds which may be relieved civilly, and not punished criminally, so there are other frauds, which in a special case may not be helped civilly, and yet shall be punished criminally. Thus, if a minor, pretending to be of age, defrauds many

persons, by taking credit for a considerable quantity of goods; the persons injured cannot recover the value of their goods, but may indict and punish him for a common cheat.

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

Checks payable on demand, or where no time of payment is expressed, are payable on presentment, without any indulgence or days of grace; but the presentment should be made within a reasonable time after the receipt, otherwise the party upon whom the check is drawn, will not be responsible, and the person from whom the holder received it will be discharged. Therefore, where circumstances will allow of it, it is advisable for the holder of a check to present it on the same day it is received. If the holder of a draft on a banker receives payment thereof in the bankers' notes instead of cash, and the banker fails, the drawer of the check will be discharged.

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

*Stealing from a Church.*—By 23 Hen. 8. c. 1. and 25 Hen. 8. c. 3, to steal, carry, or take away, any goods and chattels from any church, chapel, or other holy place, is felony without benefit of clergy.

But it having been held not to be sacrilege within these statutes, when not accompanied with the actual breaking of the church or chapel from which the goods are stolen (2 Hale P. C. 235) it was enacted by the statute 1 Edw. 6. c. 12. that to steal goods out of any parish church, or other church or chapel, is, whether accompanied with a breaking or not, felony without benefit of clergy.

By 13 Ed. 1. stat. 2. c. 6. no fairs or markets shall be kept in church-yards.

By 35 Ed. 1. stat. 2. trees in church-yards shall not be cut down, unless for the repairs of the chancel, or of the church.



By 5 and 6 *Ed. 6. c. 4.* any person who shall, by words only, quarrel in any church or church-yard, may be suspended from entering the church by the ordinary; any person striking another there, shall be deemed excommunicate, and for striking there with a weapon, or attempting so to do, shall, on conviction, have one of his ears cut off, or be branded with the letter F on the cheek.

By 6 *Ann c. 21.* statutes of cathedral and collegiate churches, founded by *Hen. 8.* used and practised since the restoration of *Ca. 2.* shall be valid.

CHURCHWARDENS are very ancient officers, and by the common law are a corporation to take care of the goods of the church, the property whereof is in them for the use of the parishioners.

They are to be chosen by the canon *Jac. 1.* by the joint consent of the minister and parishioners; and if they disagree, then the minister is to chuse one, and the parish another, every year in the Easter week, unless there is a custom to the contrary, which must be observed.

An attorney cannot be made a churchwarden; and if he is sued in the spiritual court, being chosen to that office, he may have a prohibition.

He is to see that the parishioners come to church every Sunday and Holy Day, and to present the names of such who are absent to the ordinary, or to levy 12*d.* for every offence.

If he find any in an alehouse, &c. the person is to forfeit 3*s. 4d.* and the master of the house 10*s.*

They are a corporation only as to moveables, viz. to take goods, but not lands, for the use of the church, except in London by the custom; for they cannot prescribe by the name of churchwardens to have lands, &c. neither can they have any action at common law to recover goods of which they were never possessed; but they may recover such goods by a bill in equity. But if once they had possession, then they may have an action of trespass, &c. and recover damages to the use of the parish, if such goods are taken away, or abused; and they may have an appeal of robbery if stolen; but they cannot sell such goods, or dispose of them, without the assent of the parish; if they do, the parishioners may chuse new officers, who may bring an action of account against them.

If any thing belonging to the freehold is broken, or cut down, or the walls, windows, doors, or trees, in the church-yard, &c. the parson or vicar, and not the churchwardens, shall have an action.

But the churchwardens may maintain an action for defacing a monument in the church.

And so may the heir by descent have the like action against any one, who beats down or defaces coats of arms or monuments in the church or church-yard.

In an action of account brought by churchwardens against their predecessors, they must declare *Quod reddant eis computum de bonis Parochianorum*, and not *de bonis Ecclesie*.

Churchwardens may apprehend those who disturb the minister, &c. and bring them before a justice of peace.

They may execute warrants, and levy the penalty on those who prophane the Lord's day, or who curse and swear.

They are to join with the constables in making rates for relief of the poor, &c. and in chusing surveyors of the highways, and appointing days to work.

At the end of every year they must account, and deliver what remains in their hands to the new churchwardens, by a writing intended; if they refuse, they may be presented at the next visitation, or the new officers may have an action against them.

Churchwardens of every parish within the bills of mortality, shall at the charge of their respective parishes fix stop-blocks and fire-cocks, upon the pipes belonging to the water-works, and make a mark on the front of any house over-against them, to find them, where an instrument is to be kept to open the plug when any fire happens.

And in each parish shall be kept a large engine, and a hand-engine, and a leather pipe and socket of the same size as the plug, or fire-cock, under the penalty of 10*l.* to be levied by warrant of two justices, by distress and sale of the goods of the churchwardens; one moiety to go to the informer, and the other to the poor.

The first person who brings in a large engine with a socket, &c. to a fire, shall be paid 30*s.* the second 20*s.* the third 10*s.* And the turncock whose water shall first come into the main pipe, shall have 10*s.* all paid by the churchwardens, who may raise money for the maintenance of the engine, stop-blocks, &c. as they do for the maintenance of the poor.

Two justices (*Quorum unus*) may make their warrant both to the present and subsequent churchwardens, to levy all sums and arrears of every one who shall refuse to contribute according to assessment, and in default of distress, commit them to the gaol till payment be made.

Churchwardens are not to be cited by the ecclesiastical court any further than that they may return the same day.

Where there are two or three churchwardens of a parish, each is a distinct officer, and may act though the others die.

Churchwardens and overseers refusing to receive any person removed by two justices, and to provide for them, forfeit 5*l.* on proof of two witnesses before one justice; on refusal, distress, &c. for want, forty days imprisonment.

Churchwardens may pull off a man's hat, who sits covered at the time of divine service; for though it is an offence punishable by presentment in the ecclesiastical court; yet they ought not to suffer such indecency in the mean time.

When there is any contention about a seat in the body of the church, upon complaint made to the ordinary, he may decide it, by placing that person in it whom he thinks fit; and this power is by law, because he who hath the general cure of souls, is presumed to have regard to the qualities of the parties, and to give precedence



properly. And though the seats are at the charge of the parish, and the churchwardens should prescribe, that they have used to dispose of them to such as they thought fit; yet since, of common right, the ordinary hath the disposal, and by the same right the parishioners ought to repair them; therefore such prescription shall not be allowed. And upon the same reason, should any gentleman having a house in the parish, by the consent of minister, patron, and ordinary, build a new aisle, and have a faculty to hold the same, to his use to bury in the said aisle, and for the hearing of divine service, on condition to repair it, this faculty is a good title to the aisle. But such title not good, upon prescription, or any new grant by a faculty, to a man and his heirs; but the said aisle must be supposed to be held in respect of the house, and will go with the house, to him that inhabits it. Residents only are capable of acquiring a right in pews; therefore if one purchase a pew, and after leaves the parish, his interest in the pew is gone: but if he ceases to be a house-keeper, and continues in the parish, and goes to church, his interest continues.

Notwithstanding it may have been the usage for the churchwardens to dispose of the seats, it can never amount to a prescription to exclude the bishop, because they being officers under him, whatever they do in this must be supposed to be done by an authority from him, either positively granted by faculty, or else tacitly allowed; and this must hold in London as well as everywhere else. For although in that city the churchwardens dispose of seats, yet no usage can give them a title exclusive of the bishop. For when any controversy arises, they have nowhere else to go but to him for a decision; the common law never meddling with this matter, but where a seat is claimed by prescription; and therefore, whatever usage the churchwardens may pretend to for the disposal of the seats, they must be understood to do this by the authority of the bishop, as officers under him. In prohibition for a suit in the spiritual court, for a seat in a church, the plaintiff suggests, that it is an ancient seat belonging to such a house time out of mind, &c. and alleges, that he and all those whose estate he hath, &c. repaired it. If an usage to sit in a seat, time whereof, &c. be alleged in the spiritual court, by the provement, there they may proceed to quiet his possession; but if a prescription be contested there, it is to be tried at the common law; and in such case a prohibition will lie.

Notwithstanding the seats are generally reckoned as parts of the fabric, it is if that they are fixed into the ground; for if they be not, but are loose, they are not parts of the fabric, but moveable goods of the church: and from this difference have arisen determinations of law. But this extends only to placing or displacing the inhabitants of the parish; for the ordinary cannot grant a seat to a man and his heirs; nor can it be appendant to land, but to an house, because a seat belongs to some house in the parish, and not to the person, but as owner of the house; and if such grant should be good to a man and his heirs, they would have the seat, though

they lived in another parish, which is unreasonable, and contrary to the original intention of building seats, which was for the inhabitants of the parish: and certainly if the bishop cannot make such a grant, no private person can, for the reasons above.

Where there is a custom that the churchwardens are to repair the seats, and to erect new ones, and to appoint who shall sit in them, and they do erect a new seat in the church, and appoint a certain person to sit there, and the ordinary after decrees that another shall have the seat; in this case a prohibition lies against him, for the custom hath fixed the power of disposing the seats in the churchwardens. But where there is no contention, and the ordinary doth not interpose, because no complaint, there the parson and churchwardens have power to place the parishioners, to appoint pew-keepers, &c. and in some parishes the churchwardens alone have that power by custom, as in London.

If without the consent of the bishop a seat is built in the body of the church, the churchwardens may pull it down, because it was set up by a private person without the ordinary; but if in removing such seat they cut the timber or break it, trespass lies against them. But this seems not to be law; for the freehold of the church being in the incumbent when the person hath fixed a seat to it, it is then become parcel of his freehold, and the right in him; so the breaking the timber could not be prejudicial to the other who set it up, because he has then no legal right to the materials after they were fixed to the freehold.

Seeing the seats in the body of the church are to be disposed by the parson and churchwardens, it was formerly held, that a man could not prescribe for a seat there, and yet he might prescribe for the upper part of a seat there. But the law is settled as to this, viz. that one may prescribe for a seat in the body of the church, setting forth that he is seised of an ancient house, and that he and all those whose estate he hath therein, have time out of mind used a seat in the body of the church for themselves and families, as belonging to the said house, and that they repaired it. And the reason why he must allege that they repaired it is, because the freehold being in the parson, there must be some cause shewed for such a prescription: but the court distinguished between an action on the case brought against a disturber, and a suggestion for a prohibition: for in the first, you need not allege that you repair, because the action is brought against the wrong-doer; but for a prohibition it must be alleged that you repair, otherwise you divest the ordinary of that right which belongs to him.

For the same reason that a man may prescribe for a whole seat, so he may for the first, second, or other sitting or place in a seat. And there is not much exactness required, for if an action on the case is brought for disturbance, &c. it is sufficient to allege, that he is seised in fee of a messuage, &c. (without saying it is an ancient messuage) and that he and all those, whose estate he hath in the said messuage, had (without saying time out of mind) a seat in the church, which they used to repair, &c. This is well, because



the action is on a wrong done by one who disturbed his possession ; in which action the plaintiff will recover damages if the verdict is found for him. He may libel in the spiritual court, and prescribe for a seat, &c. but if the prescription is denied, a prohibition will be granted ; if it is not, then that court may proceed to sentence ; which if against the prescription, a prohibition will lie, because the suit being upon a prescription, the proceedings in it were *coram non Judice* ; but this seems unreasonable, for it can be only to discharge the person of the costs which he ought to pay.

The law concerning seats in aisles of churches, is, that if a man hath an house in a parish, and seat in the aisle, which he hath repaired he shall not be dispossessed by the bishop ; if he should, he may have a prohibition, because it shall be intended to be built by his ancestors, with the consent of the parson, patron and ordinary appropriated by them to his and their use ; and if he is disturbed by any person in sitting there, he may have an action on the case : but then he must prove that he repaired it : and so it was adjudged between Hawtree and Dee, for seats in a little chapel of the chancel of Petworth. For though no man can tell the true reason of a prescription, yet some probable one must be alleged to gain such a particular right, and none is more probable than repairing it. And it will entitle a man to a seat in an aisle, though he lives in another parish ; and therefore where the plaintiff sets forth, that he had an ancient messuage in H. and that he and all those whose estate he had in the same house, had a seat in the aisle of B. this is a good prescription for a seat in the aisle, because he or they might build and repair it ; though it is not good to have a seat *in nave ecclesie* of another parish.

The ordinary hath no authority to place any one in the chancel, for that is the freehold of the rector : and so is the church ; but he repairs the one end and not the other. And for this, though some are of a contrary opinion, that an impropiator hath the chief seat in the chancel ; and repairing of the chancel is a discharge from that of the church, unless for land not parcel of the parsonage. If there be room for any other seats, the bishop can grant faculties for the building and disposing of them, in the chancel, as well as in the church ; only if the bishop does not, then the parson may dispose of the seats in the chancel, in the same manner, as the churchwardens do those in the church, because of his repairing it. But if any controversy, there lies an appeal to the bishop from the one, as well as from the other. The case is very peculiar in the city of London, for the churchwardens repairing the chancel as well as the church, do equally dispose of the seats in both ; but it must be with the same subordination to the bishop. But yet a man may prescribe to have a seat here, as belonging to an ancient messuage. And it is said, churchwardens cannot prescribe for a right for the ordinary's desisting from acting, as they are not capable of inheritance.

A new pew or other thing set up in a church, may not afterwards be removed, for they are become church goods.

Churchwardens are to see that all parishioners duly resort to their church, and continue during divine service. They ought to permit no person to cover his head there, except he has some infirmity, and then with a cap. They are not to permit any to stand idle, or make noise, or to contend about places; they are to chastise disorderly boys, &c. They may apprehend those who disturb the minister, and appease any disorder in the church or church-yard.

Churchwardens are to suffer no man to preach within their churches, or chapels, without producing his license; and to take care that all persons excommunicated be kept out of the church, and to see that peace be daily kept in the congregation.

They are to keep the keys of the belfrey, and take care that the bells be not rung without good cause, to be allowed of by the ministers and themselves.

ST. CLEMENT'S INN, appears to have derived its name from the church near which it stands, and a celebrated holy well adjoining: both of which were dedicated to the Roman pontiff St. Clement. This well was one of the principal springs at which the city youth on festival days used to entertain themselves with a variety of diversions, and is the same which is now covered, and a pump placed in it, on the east side of St. Clement's Inn, and lower end of St. Clement's Lane.

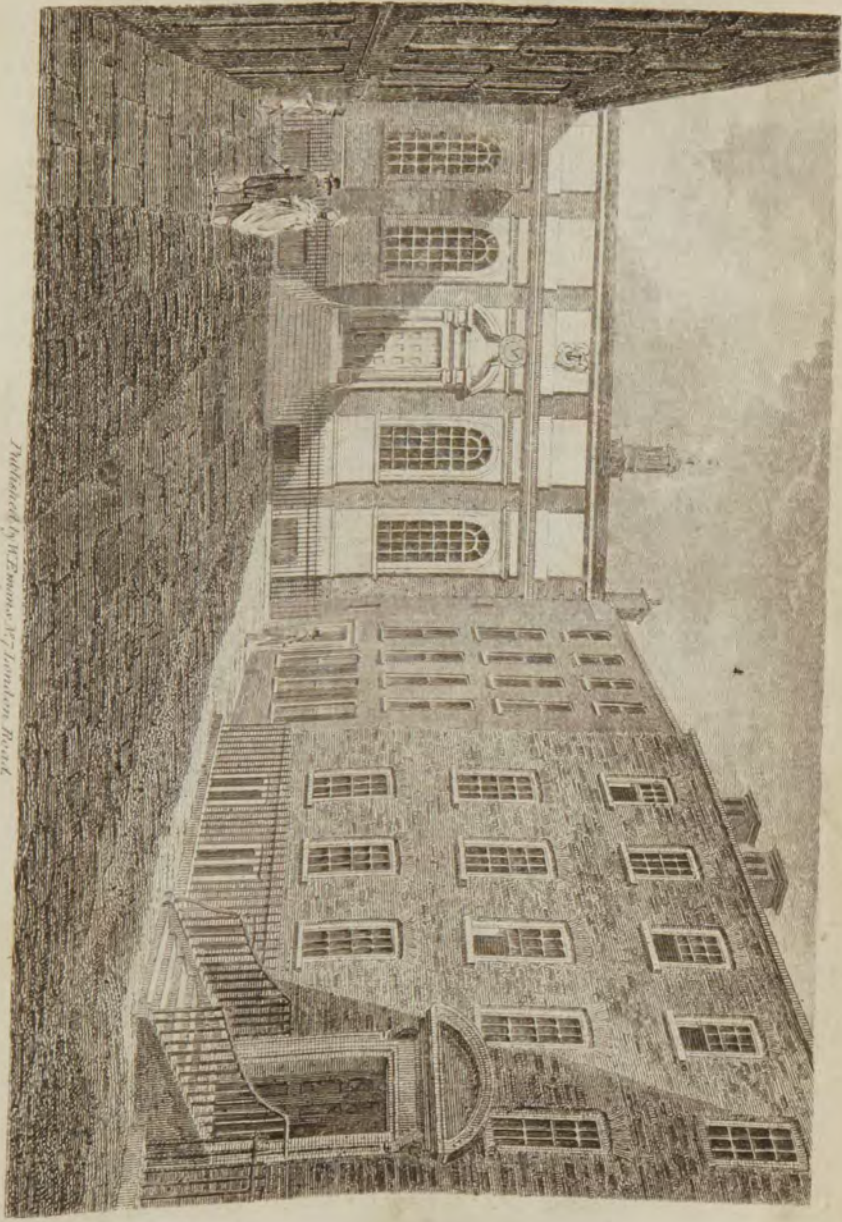
A house, or inn of chancery, for the education of the students of the law, was situated on this site, in the time of King Edward IV. as appears from the book of entries, from the record of *Mich. 19. E. 4.* fol. 61. *titulo, misnomer*; where the defendant, to shew that he was not named of the right place of his abode, pleaded thus:—  
*“Dicit, quod tempore impetrationis brevis, fuit de hospicio de Clementis Inne, in parochia S. Clementis Decorum, extra barram Novi Templi, Lond. in comitatu Middlesexiæ: quod quidem hospicium est, et tempore ante impetrationis brevis, et diu ante, fuit quoddam hospicium hominum curiæ legis temporalis, nec non hominum consiliariorum ejusdem legis.”*

Whose inheritance it anciently was, however, is not known. In the year 1486, Sir John Cantlowe, knight, by a lease, bearing date the 20th of December, in consideration of xl. marks fine, and 4l. 6s. 8d. yearly rent, demised it for eighty years to William Elyot and John Elyot (in trust, as it may be presumed, for the students of the law).

About the year 1528, Cantlowe's right and interest were passed to William Holles, citizen of London, afterwards knight, and lord mayor of that city, and ancestor of the dukes of Newcastle, one of whom, John Earl of Clare, son and successor of Sir John Holles, the first earl, and whose residence was on the site of the present Clare Market, demised it to the then principal and fellows.

The buildings of the present inn are all modern, and occupy three small courts; through which there is a thoroughfare in the day-time to Clare Market and New Inn. The chambers are by no means so good as those of the latter place.





Printed by W. B. Mason, 17, Johnson, Road.





The hall fills one side of the middle square, or court, and is a well-proportioned and elegant room. It contains a good portrait of Sir Matthew Hale, and five other pictures of no importance. On the outside, the front of which has a respectable and handsome appearance, are placed the arms of the society, argent an anchor (without a stock) in pale proper, and C sable passing through the middle.

In the middle of the garden, which adjoins that of New Inn, and is kept with particular neatness, is a sun-dial, supported by a figure of considerable merit, kneeling (a naked Moor, or African), which was brought from Italy by Lord Clare, and presented to the society: it attracts much attention.

The students who nestled at this and the several adjoining little law seminaries or inns, notwithstanding the greater severity than at present with which they were governed, appear to have possessed much of the unruliness of the modern gentlemen of our universities, if we may credit the following anecdote, told by Strype. Speaking of St. Clement's Church, he says;

"Here, about this church, and in the parts adjacent, were frequent disturbances, by reason of the unthrifths of the inns of chancery, who were so unruly on nights, walking about to the disturbance and danger of such as passed along the streets, that the inhabitants were fain to keep watches. In the year 1582, the recorder himself, with six more of the honest inhabitants, stood by St. Clement's Church to see the lanthorn hung out, and to observe if he could meet with any of the outrageous dealers. About seven at night, they saw young Mr. Robert Cecil, the lord treasurer's son, who was afterwards secretary of state to the queen, pass by the church, and as he passed, gave them a civil salute: at which they said, 'Lo! you may see how a nobleman's son can use himself, and how he putteth off his cap to poor men: our Lord bless him.'" This passage the recorder wrote in letter to his father, adding, 'Your lordship hath cause to thank God for so virtuous a child.'

Lord chief justice Sanders, who succeeded Sir Francis Pemberton, chief justice in 1681, received the rudiments of his education here, and was too extraordinary a person to be passed over in silence. He was originally, it is said, a strolling beggar about the streets, without known parents or relations, and coming often to beg scraps at Clement's Inn, was taken notice of for his uncommon sprightliness, and as he expressed a strong inclination to learn to write, one of the attorneys' clerks taught him, and soon qualified him for a hackney writer. In this station he took all opportunities of improving himself by reading such books as he borrowed of his friends, and in the course of a few years became an able attorney, and a very eminent counsel. His practice in the court of King's Bench was exceeded by none: his art and cunning were equal to his knowledge, and he carried many a cause by laying snares. If he was detected, he was never out of countenance, but evaded the matter with a jest, which he always

had at hand. He was much employed by the king against the city of London, in the business of the *quo warranto*. His person was as heavy and ungain, as his wit was alert and sprightly. He is said to have been "a mere lump of morbid flesh;" the smell of him was so offensive, that people usually held their noses when he came into the court. One of his jests on this occasion was, that "none could say he wanted issue, for he had no less than nine in his back."

St Clement's Inn is an appendage of the Inner Temple.

CLERGY. The clergy have by law several privileges, which are not allowed the laity, viz.

They are not to serve in any temporal office, though they hold lands, by reason whereof the other men ought to serve; and if they are chosen to any such office, there is a writ in the register to discharge them.

They are not bound to serve in the wars, neither are they to pay tolls on pontage, for the goods which they have of the church.

Before the 20th Ed. 1. they paid no tenths to the king for their ecclesiastical livings, but to the pope; but in that king's reign their livings were valued all over England, and the tenth paid to the king; and now by the statute 26 H. 8. c. 3. they are given to the crown for ever.

If a man in orders is a *conizee* in a stat. his body shall be taken in execution; and if he is *Clericus Beneficiatus*, a *Levari facias* shall not be brought against his goods, but a writ of the bishop, to levy the debt, *de bonis Ecclesiasticis*.

All which liberties and many more are confirmed by Magna Charta, &c.

COALS. Sea-coal brought into the Thames, shall be sold by the chaldron, containing thirty-six bushels heaped up, according to the bushel sealed for that purpose at Guildhall.

Coals within the bills shall be carried in linen sacks, sealed by the proper officer, which shall be at least four feet four inches in length, and twenty-six inches in breadth: and sellers of coals by the chaldron, or less quantity, shall put three bushels of coals into each sack.

All sellers of coals, are to keep a lawful bushel, which bushel and other measures shall be edged with iron and sealed; and using others, or altering them incurs a forfeiture of 5*l*.

Any purchaser dissatisfied with the measure of any coals, may, on delivery to him of the meter's ticket, have the same measured, by sending notice thereof to the seller, and to the land coal-meter's office for the district in which the coals were sold; on which a meter (not being the same under whose inspection the coals were originally measured) must within two hours attend to re-measure the coals, and shall re-measure the same sack by sack, in the presence of the seller and purchaser (if they attend) and also in the presence of a meter from the two other districts (whose attendance within London and Westminster is enforced by a penalty of 5*l*. but not in Surry; for this attendance, the purchaser is to pay each



coal-meter attending, sixpence per chaldron. If the coals prove deficient in measure, the seller shall forfeit 5*l.* for every bushel deficient in measure, and also forfeit the coals to the poor. The meter under whose inspection the coals were measured at the wharf shall also forfeit 5*l.* per bushel deficient, to be recovered (if not in five days) of the principal coal-meter; and coal-porters 2*s.* 6*d.* per bushel.—The carman is to be paid 2*s.* 6*d.* for his horses, &c. for each hour whilst the coals are re-measuring.

Any coal-factor receiving, or coal-owner giving, any gratuity, for buying and selling any particular sort of coals, and selling one kind of coals for, and as a sort which they really are not, shall forfeit 50*l.*

Owners or masters of ships shall not enhance the price of coals in the river Thames, by keeping turn in delivering coals there, under the penalty of 100*l.* Contracts between coal-owners, &c. and merchants of ships, for restraining the buying of coals, are void, and the parties shall forfeit 100*l.*

Wilfully and maliciously setting on fire any mine, pit, or delph of coal, or cannel-coal, is felony without benefit of clergy.

Setting fire to, demolishing, or otherwise damaging, any engine, or any other thing belonging to coal-mines, is felony, and transportation for seven years.

CODOCIL. See WILL.

COFFEE, TEA, CHOCOLATE, &c. The statute 10 *Geo.* 1, which takes off the custom duties on coffee, tea, and chocolate, lays certain inland duties thereon payable by the druggists and dealers therein; and entries are to be made in writing of all warehouses, shops, and places where made, &c. on penalty of 200*l.* and forfeiture of the goods, &c.

Officers of the said duties may, in the day-time, enter such warehouses, shops, and places, to weigh, guage, and take account of coffee, &c. the owner to assist therein, and to keep good scales, weights, &c. And persons hindering the officer, or not assisting, or not keeping such weights and scales, forfeits 200*l.*

Officers, on suspicion of coffee, &c. concealed, &c. may (if within the bills of mortality), on oath before the commissioners of the duties, (or if in other places, before one justice, by their special warrant), by day, or (with a constable, &c.) by night, enter suspected places, and seize and carry away such concealed coffee, &c. and persons obstructing or hindering the officer, &c. in entering or seizing, forfeits 100*l.*

COIN, metallic money, struck with a mark, effigy, or inscription, from which its weight, title, and value are known; and though the material of which it is composed were melted, into any other form, still it would preserve the same value, or very nearly so.

Counterfeiting the king's money, or bringing false money into the realm counterfeit to the money of England, clipping, washing, rounding, filing, impairing, diminishing, falsifying, scaling, light-

ening, edging, colouring, gilding, making, mending, or having in one's possession any puncheon, counter-puncheon, matrix, stamp, dye, pattern, mould, edger, or cutting-engine: all these incur the penalty of high treason. And if any person shall counterfeit any such kind of gold or silver as is not the proper coin of the realm, but current therein by the king's consent, he shall be guilty of high treason.

If any person shall tender in payment any counterfeit coin, he shall, for the first offence, be imprisoned six months; for the second offence two years; and for the third offence shall be guilty of felony without benefit of clergy.

Blanching copper, or other base metal, or buying or selling the same, and receiving or paying money at a lower rate than its denomination: doth import, and also the offence of counterfeiting copper halfpence and farthings, incur the penalty of felony, but within clergy. Counterfeiting coin not the proper coin of this realm, not permitted to be current therein, is misprision of treason. A person buying or selling, or having in his possession, clippings, or filings, shall forfeit 500*l.* and be branded on the cheek with the letter R. And any person having in his possession a coining press or casting-bars, or ingots of silver, in imitation of Spanish bars or ingots, shall forfeit 500*l.*

COMBINATIONS, are persons assembled together unlawfully, with an intent to do unlawful acts, and these offences are punishable before such acts are carried into effect, in order to prevent the consequences of combinations and conspiracies.

By the 39 and 40 *Geo. 3. c.106*, every workman who shall enter into any contract for obtaining an advance of wages, altering the usual time of working, decreasing the quantity of work, or the like (except contracts between masters and men), shall be committed to the common gaol for not more than three months, or the house of correction for not more than two, on conviction before two justices; also any workmen entering into any combination for advancing wages, or the like, as above, or who shall wilfully and maliciously endeavour to prevent any workman from hiring himself, or prevail on him to quit his employ, or who shall hinder any master from employing any person, or, without reasonable cause, shall refuse to work with any other workman, and also all persons who shall attend any meeting for the purpose of making any such illegal contract, or who shall summon, or by intimidation, or otherwise, endeavour to induce any journeyman to attend any such meeting for any such purposes.

No person shall contribute for any expences incurred for acting contrary to this act, or toward the support of any person to induce him not to work, on penalty not exceeding 10*l.* and any person collecting money for such purposes shall forfeit not exceeding 5*l.* one moiety to his majesty, and the other to the informer and the poor of the parish. The offences shall be determined in a summary way, before two justices, who shall fix the penalty, and if



not paid, shall cause it to be levied by distress, or in default thereof, shall commit the offender to the common gaol or house of correction.

Contributions made for any prohibited purposes shall be forfeited, one moiety to the king, and the other to the person who shall sue for the same: Persons liable to be sued for contribution money shall be obliged to answer, on oath, to any information in equity preferred against them by the attorney-general, or at the relation of any informer. Upon payment into court of the money remaining in the hands of any person at the time of filing information, and making discovery of the securities upon which other monies shall have been placed, the party shall be discharged from penalty, and no person is to be liable to penalty for money discovered by any answer to an information.

Offenders may be compelled to give evidence, and shall be indemnified from prosecution for any offence whatever to which they give testimony. Justices may summon offenders, and on their not appearing, and in the first instance, may issue warrants for their apprehension, and also on their appearing, or on proof of their absconding, may convict or acquit the parties. Justices may summon witnesses, and for non-appearance, or refusal to give evidence, may commit them until they submit. Convictions are to be transmitted to the next general or quarter sessions, to be filed; and if appeal be made, the justices shall then proceed to hear it. But this act shall not abridge powers now given by law to justices touching combinations, nor empower manufacturers to employ workmen contrary to the provisions now in force for regulating the conduct of any particular manufacture, without license from a justice, who is empowered to grant the same in the case of misconduct on the part of a qualified workman.

No master in the trade in which any offence is charged to have been committed, shall act as a justice under this act. All contracts between masters, or other persons, for reducing the wages of journeymen, or for altering the usual hours of working, or increasing the quantity of work, shall be void, and masters convicted thereof shall forfeit 20*l.* one moiety to his majesty, and the other to the informer and the poor of the parish, which may be levied by distress, and, if not paid, the offender may be committed for not exceeding three, nor less than two calendar months. Disputes between masters and workmen may be settled by arbitration. If arbitrators shall not decide the matter within three days after submission to their award, either party may require them to go before, and state to a justice the points in difference, who shall finally determine the same. Persons summoned neglecting to attend the arbitrators, or refusing to be examined, may be committed by a justice till they submit. But the parties may extend the time limited for making the award, and the submission to arbitration and the award may be on unstamped paper, and each party to have a copy of the submission. If an arbitration be demanded, and the submission signed, and an arbitrator named by either party, and the other shall

refuse to sign the submission and appoint his arbitrator, he shall on conviction, forfeit 10*l.* half to the king, and the other to the poor of the parish, which may be levied by distress, or in default, the offender may be committed for three months, or not less than two. If either party shall not perform what is directed by the award, he may be committed till performance; but no person is to be deemed guilty in not attending at more than one arbitration at a time, or more than two in one day; and non-resident masters may appoint persons to act for them. Appeal may be made to the general sessions, or general quarter sessions, whose decision shall be final.

COMMITMENT, is the sending a person to prison by warrant or order, either for a crime or for contumacy. If for a crime, the warrant must be until discharged according to law; but for contumacy, until he comply, and perform the thing required. The commitment should be in writing, otherwise, by the habeas-corpus act, the prisoner may be admitted to bail, whatever his offence may have been.

*Who may commit.* Wheresoever a constable or person may justify the arresting of another for felony, or treason, he may justify the sending him or bringing him to the common gaol. But it is most advisable for any private person, who arrests another for felony, to cause him to be brought as soon as possible before some justice of the peace, that he may be committed or bailed by him.

The privy council, or any one or two of them, or a secretary of state, may lawfully commit persons for treason, and for other offences against the state.

*To what place.* All felons shall be committed to the common gaol, and not elsewhere. But vagrants, and other criminals, offenders, and persons charged with small offences, may, for such offences, or for want of sureties, be committed either to the common gaol or house of correction, as the justices in their judgment shall think proper.

*Who may be committed.* All persons who are apprehended for offences not bailable, and those who neglect to offer bail for offences which are bailable, must be committed; and wheresoever a justice of peace is empowered to bind a person over, or to cause him to do a certain thing, he may commit him, if in his presence he shall refuse to be so bound, or do such a thing.

*Observations respecting commitment.* A commitment must be in writing, either in the name of the king, and only tested by the person who makes it: or it may be made by such person in his own name, expressing his office or authority, and must be directed to the gaoler or keeper of the prison. The commitment should contain the name and surname of the party committed, if known; if not known, it may be sufficient to describe the person by his age, &c. and to add, that he refuses to tell his name. It ought to contain the cause, as for treason or felony, or suspicion thereof; and also the special nature of the felony, briefly, as for felony



for the death of such an one, or for burglary, in breaking the house of such an one. A commitment must also have an apt conclusion; as if it be for felony, till he be thence delivered by due course of law. All commitments grounded on acts of parliament ought to be conformable to the method prescribed by them. And where a statute appoints imprisonment, but does not limit the time, in such case the prisoner must remain at the discretion of the court.

*The duty of a gaoler respecting commitments.* If the gaoler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. But no person can justify the detaining a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as if the party should be so dangerously ill, that it would apparently hazard his life to send him to gaol, or that there be evident danger of a rescue from rebels, or the like. By the 3 Hen. 7. c. 3. the sheriff or gaoler shall certify the commitment to the next gaol delivery.

By the habeas corpus act, the charge of conveying an offender is limited not to exceed 12d. a mile.

*Commitment discharged.* A person legally committed for a crime, certainly appearing to have been done by some person or other, cannot be lawfully discharged but by the king, till he be acquitted upon his trial, or have an *ignoramus* found by the grand jury, or none shall prosecute him on a proclamation for that purpose by the justices of gaol delivery.

COMMON, is a right or privilege which one or more persons claim to take or use, in some or portion of that, which another man's lands, waters, woods, &c. naturally produce: without having an absolute property in such lands, woods, waters, &c.

*Of the several kinds of common.* The general division of common, is into common of pasture, which is a right or liberty that one or more have to feed or fodder their beasts or cattle in another man's land. Common of turbary, or a liberty of cutting turves in another man's land or soil. Common of piscary, or a right and liberty of taking fish in another's fish-pond, pool, or river. Common of estovers, which is a right of taking trees or loppings, shrubs, and underwood, in another's woods, coppices, &c. and lastly, a liberty which the tenants have in some manors, of digging and taking sand, gravel, stone, &c. in the lord's soil.

But the word common is usually understood of common of pasture, of which there are four kinds; common appendant; common appurtenant; common in gross; and common by reason of vicinage.

Common appendant is a right belonging to the owners or occupiers of arable land, to put commonable beasts upon the lord's waste, and upon the lands of other persons within the same manor. Commonable beasts, are either beasts of the plough, or such as manure the land.

Common appurtenant can only be claimed by prescription, and

is a right of commonage for beasts, not only commonable, as horses, oxen, cows, and sheep, but likewise for beasts not commonable, as swine, goats, and geese.

*Common in gross* is a right of commonage which must be claimed by deed or prescription, and has no relation to any land belonging to the commoner; it may be for a certain number of cattle, or without number. He that hath common in gross for a certain number of cattle, may put in the cattle of a stranger, and use the common with them.

*Common by reason of vicinage*, is a liberty that the tenants of one lord, in one town, have to common with the tenants of another lord, in another town. Those who challenge this kind of common (which is usually called intercommoning) may not put their cattle in the common of the other town, for then they are distrainable: but turning them into their own fields, if they stray into the neighbouring common, must be suffered.

*How far the commoner is interested in the soil.* A commoner hath only a special and limited interest in the soil, but yet he shall have such remedies as are commensurate to his right, and therefore may distrain beasts damage-feasant, bring an action on the case, &c. but not being absolute owner of the soil, he cannot bring a general action of trespass, for a trespass done upon the common. Nor can he do any thing to the soil which tends to the melioration or improvement thereof, as cutting down of bushes, fern, &c. Commoner may abate hedges made on his common; and may drive the beasts of a commoner mixed with the beasts of a stranger to a convenient place to sever them, and may drive the beasts of the stranger out of the common, without any custom. It is a general rule, that a commoner cannot distrain or chase out the cattle of the lord, or terre tenant, damage-feasant; and if the lord surcharge the common, his proper remedy is an action on the case.

*Common (inclosure of)*—By statute 13 Geo. 3. c. 81. in every parish where there are common fields, all the arable lands lying in such parish shall be cultivated by the occupiers, under such rules as 3-4ths of them in number and value (with the consent of the land and tithe owners, the latter of whom by section 23, are not to receive any fines, only rents) shall appoint by writing under their hands, the expence to be borne proportionably.

Persons having a right of common, but not having lands in such fields, and persons having sheep-walks, may compound for such right by written agreement, or may with their consent, have parts allotted them to common upon. And the walks, slades, and meres may be ploughed up.

Lords of manors, with the consent of 3-4ths of the commoners on the waste, and commoners within their manors, may demise (for not more than four years) any parts of such wastes, &c. not exceeding 1-12th part; and the clear rents reserved for the same shall be applied in improving the residue of such wastes.

In every manor where there are stinted commons, in lieu of de-



missing part thereof, assessments on the lords of such manors, and the owners and occupiers of such commons, may be made, and the money employed in the improvement of the commons, under the direction of the majority; which (or in some instances 2-3ds) may regulate the depasturing, opening, shutting up, breaking and unstocking the commons, and the kind of cattle to be allowed the commoners.

Commons must be driven yearly at Michaelmas, or within fifteen days after. Infected horses, and stone-horses under size, &c. are not to be put into commons, under forfeitures. New erected cottages, though they have four acres of ground laid to them, ought not to have common in the waste.

**COMMON LAW.** The common law of England, is the common rule for administering justice within this kingdom, and asserts the king's royal prerogatives, and likewise the rights and liberties of the subject: it is generally that law by which the determinations in the king's ordinary courts are guided. It is distinguished from the statute laws or acts of parliament, as having been the law of the land, before any acts of parliament which are now extant were made.

**COMMON PLEAS.** Pleas or suits are regularly divided into two sorts; pleas of the crown, which comprehend all crimes and misdemeanors wherein the king (on behalf of the public) is plaintiff; and common-pleas, which include all civil actions depending between subject and subject. The former of these were the proper objects of the court of king's bench, the latter of the court of common-pleas, and in this court only can real actions, that is actions which concern the right of freehold or the reality, be originally brought; and in this court also, all other or personal pleas between man and man are determined, but in some of these the court of king's-bench hath a concurrent authority. But a writ of error, in the nature of an appeal, lies from the court of common-pleas to the court of king's-bench. This court can hear and determine causes removed out of inferior courts by *pone recordare*, or other like writs. They can also grant prohibitions, to keep other courts, as well ecclesiastical as temporal, within due bound.

**COMMON OF PISCARY.** Besides common pasture, there are common of piscary, turbary, estovers, &c. Common of piscary, is a liberty of fishing in another man's water: common of turbary, is a licence to dig turf upon the ground of another, or in the lord's waste: and common of estovers, is a right of taking wood out of another man's woods, for house-bote, plough-bote, and hay-bote.

Common of piscary, to exclude the owner, is against law: but a man may prescribe to a separate right of fishing, in a water, and the owner of the soil be excluded. For a man may grant the water, without passing the soil; and a particular right of fishing, without granting the soil or the water. Erecting weirs is unlawful; but a man may make fish ponds, &c. in his own ground. Common of turbary, is appendant or appurtenant to an house, wherein the

turfs dug are to be burnt; not to lands: it cannot exclude the owner of the soil, nor doth it give any right to the land, trees, mines, &c. Though there may be a common or liberty of digging coals, gravel, &c.

**COMMON OF ESTOVERS.** As to common of estovers, house-bote, is a right of taking timber to repair the house, or burn in the house; but then it is called fire-bote. Plough-bote, is a right of taking wood to repair ploughs, carts, harrows, make rakes, &c. And hay-bote, or hedge-bote, is a right of taking wood to repair hedges, gates, and inclosures. If the tenant take more house-bote than necessary, &c. he may be punished for waste: but what botes are needful, he may take although not mentioned in his lease.

When a house has estovers appendant or appurtenant, and the same is overthrown by wind, &c. If the owner rebuilds it in the same place and manner as before, his estovers shall have continuance. And if he alters the rooms and chambers, without making new chimneys, prescription for estovers continues; but if he make new chimneys, he cannot spend any estovers in any such new chimneys.

In all cases when the alterations to a house do no prejudice to the owner of the land, the estovers remain. And a man seised in fee of a house and land, prescribing to have estovers to repair and build a new upon the land, has been held a good prescription.

Tenants for life, may take upon the land demised reasonable estovers; except restrained by special covenant: and every tenant for years, hath three kinds of estovers incident to his estate.

**COMMON PRAYER.** It is the particular duty of a clergyman every Sunday, &c. to use the public form of prayer, prescribed by the book of common prayer. And the 13 and 14 *Ch. 2. c. 4.* enacts that every incumbent residing upon a living and keeping a curate shall at least once a month, publicly read the common prayer, and if there be occasion, administer the sacraments, and other rites of the church, on pain of 5*l.* to the poor, on confession or conviction thereof before two justices.

**COMPOSITION FOR TITHES,** an agreement or contract between a parson, and a patron, and ordinary, &c. for money or other things in lieu of tithes. The composition for tithes, made by the consent of the parson, patron, and ordinary, by virtue of 13 *Eliz. c. 10.* shall not bind the successor, unless made for twenty-one years or three lives, as in case of leases of ecclesiastical corporations, &c.

**COMPOUNDING OFFENCES, &c.** See **FELONY.**

**CONFESSION OF OFFENCE,** is when a prisoner is appealed or 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.

Confession, is two fold, either express or implied. An express confession is, where a person directly confess the crime with



which he is charged, which is the highest conviction that can be. But it is usual for the court, especially if it be out of clergy, to advise the party to plead, and put himself upon his trial, and not immediately to record his confession, but to admit him to plead.—An implied confession is, where a defendant in a case not capital, does not directly own himself guilty, but in a manner admits it, by yielding to the king's mercy, and desiring to submit to a small fine; which submission the court may accept if they think fit, without putting him to a direct confession.

*Confession in a civil action.* Sometimes there is a confession in a civil action, but not usually of the whole complaint, for then the defendant would probably end the matter sooner, or not plead at all, but suffer judgment to go by default; but sometimes, after tender and refusal of debt, if the creditor harass his debtor with an action, it then becomes necessary for the defendant to confess the debt, and plead the tender; for a tender by the debtor, and refusal by the creditor, will in all cases discharge the costs. So in order to strengthen the creditor's security, it is usual for the debtor to execute a warrant of attorney to confess judgment in an action to be brought by such creditor; which judgment when confessed, is complete and binding.

**CONFIRMATION OF AN ESTATE**, is a conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased. Thus a bishop grants his chancellorship by patent, for the term of the patentee's life; this is no void grant, but voidable by the bishop's death, except it be strengthened by the confirmation of the dean and chapter.

**CONJURATION.** The using of witchcraft, conjuration, &c. was made felony by the 1 *Jac. c. 12.* but that superstitious statute having produced many pernicious effects, it was wisely repealed by the 9 *Geo. 2. c. 5.* wherein it is enacted, that no prosecution, suit, or proceeding shall be commenced, or carried on, against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence, in any court whatsoever. And by the 17 *Geo. 2. c. 5.* all jugglers, fortune-tellers, and gypsies pretending to physiognomy, palmistry, or the like crafty science, shall be deemed rogues and vagabonds.

The 9 *Geo. 2. c. 5.* however enacts, that if any person shall pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration; or undertake to tell fortunes; or pretend from his skill or knowledge in any occult or crafty science; to discover where, or in what manner, any goods or chattels supposed to have been stolen or lost, may be found; every person so offending, being convicted on indictment or information, shall suffer imprisonment for a year without bail or mainprize; and shall also, if the court by which such judgment shall be given shall think fit, be obliged to give sureties for his good behaviour, in such sum, and for such time as the court shall judge proper, according to the circumstances of the offence; and in such case shall be further imprisoned, till such sureties shall be given.

**CONSANGUINITY**, or kindred, is the connexion or relation of persons descended from the same stock or common ancestor; and is either lineal or collateral. Lineal consanguinity, is that which subsists between persons, of whom one is descended in a direct line from the other, as grandfather, father, and son. Collateral consanguinity, is that which subsists between persons descended from the same common ancestor, but not from another; as brothers, uncles, and nephews.

**CONSIDERATION**, is the material cause of a contract, without which it would not be effectual or binding. Consideration in contracts, is something given in exchange, something that is mutual and reciprocal; as money given for goods sold, work performed for wages. And a consideration of some sort or other is so absolutely necessary to the forming a contract, that a *nudum pactum* or agreement to do or pay any thing on one side, without any compensation on the other, is totally void in law; and a man cannot be compelled to perform it. A consideration is necessary to create a debt, otherwise it is a *nudum pactum*.

**CONSPIRACY**. If any butchers, brewers, bakers, poulterers, cooks, costermongers, or fruiterers, shall conspire, covenant, &c. not to sell but at certain prices; or if artificers, workmen, or labourers, conspire, covenant, or promise that they will not do their work but at certain prices or rates, or shall not work but at certain hours or times; or shall not take on them to finish what another hath begun; or shall do but certain work in a day; such person convicted by witness, confession, or otherwise, shall forfeit 10*l.* to the king: and if not paid in six days after conviction, shall be imprisoned for twenty days with only bread and water; and for the second offence forfeit 20*l.* and shall pay it within six days, and for the third offence forfeit 40*l.*

And if such conspiracy be made in a society, company of any craft, mystery, or occupation above-mentioned, by the major part of them; then over and besides the particular punishment above-mentioned, the corporation shall be dissolved. Justices of peace may hear and determine the offences, and punish the offenders.

Conspiracy is the act of those that confederate or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other, falsely and maliciously, to indict, or cause to be indicted, or falsely to move or maintain pleas. From which it seems clearly to follow, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, (whereupon he is lawfully acquitted) are properly conspirators; but that those also are guilty of this offence who basely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such confederacy or not. For this offence the conspirators (for there must be at least two to form a conspiracy) may be indicted at the suit of the king, and may be sentenced to fine, and imprisonment.

**CONSTABLE**, by the laws of Alfred, the freemen were to distribute themselves into decennaries, and hundreds; and every ten freeholders chose an annual officer, whom they called constable



bors-holder, tithingman, or headborough, as the head of the decernary or ten. These in every hundred where there was a feudal lord, were sworn in and admitted by the lord or his steward, in his leet; but where there was no feudal lord, the sheriff, in his torn, had the swearing of them in. So if there were no feudal lord of the hundred, an annual officer was chosen, who was to preside over the whole hundred, and was called the high constable.

The ancient officers of any of the colleges in the two universities are exempted from this office. Any person of the age of 63 years or upwards, is not compellable to serve the office of constable within the city of Westminster. No person born out of the kingdom of England or the dominions thereof (except he be born of English parents), is eligible to serve this office, even though he be naturalized. Counsellors, attornies, and all other officers whose attendance is required in the courts of Westminster-hall, aldermen of London, the president and fellows of the fellowship of physic in London, surgeons and apothecaries in London, and within seven miles thereof, being free of the company of apothecaries, and teachers, and preachers in holy orders, in a congregation legally tolerated, and also by 31 *Geo. 3. c. 32. s. 8.* every Roman Catholic minister taking the oaths, and conforming to the regulations of that act, shall respectively be exempted from the office of a constable. The prosecutor of a felon to conviction, or the person to whom he shall assign the certificate thereof, shall be discharged from the office of constable. And per Holt, C. J. no man who keeps a public-house ought to be a constable.

But generally speaking, every housekeeper, inhabitant of the parish, and of full age, is liable to fill the office of constable: he ought, however, to be of the abler sort of parishioners, as being more likely to perform his duty with probity and discretion.

It seems regular, that the petty constable ought to be chosen in the leet, and the high constable in the torn, which is the general leet of the whole hundred; and if there be no leet, then that the petty constable ought to be chosen also in the torn.

If the party chosen be not present in court, the sheriff or steward of the leet ought to issue a precept to command such party, at a certain time and place, to take the oath before a justice of the peace; who, if he refuse to be sworn after such notice of appointment, may bind him over to the assizes or sessions, there to be indicted.

But it should seem that the justices have no power to commit any person for such refusal and no more; the proper mode of proceeding being, to cause the party to be indicted upon his refusal, and if it be found against him, to assess a good fine, and then commit him for that cause.

The high constables of hundreds are generally chosen either at the sessions, or by the greater number of the justices of the division; and they may be sworn at sessions, or by warrant from the sessions, which course has often been allowed and commended by the justices of assize. The office of petty constable being very necessary for the preservation of the peace, the justices of

the peace have, ever since the institution of their office, taken upon them, as conservators of the peace, not only to swear the petty constables who have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed in them. And this power of the justices having been confirmed by the uninterrupted usage of many ages, shall not now be disputed.

The original and proper authority of a high constable, as such, seems to be the very same within his hundred, as that of the petty constable within his *ville*. The other branches of his office, such as the surveying of bridges, levying county rates, the issuing precepts concerning the appointment of the overseers of the poor, surveyors of highways, assessors and collectors of the land-tax and window duties, &c. are in him, not of necessity, but as matter of convenience. Every high and petty constable is, by common law, a conservator of the peace. The general duty of constables is to preserve the king's peace in their several districts; for which purpose they are armed, as well by the common law as by the legislature, with the very large and serious powers of arresting and imprisoning their fellow-subjects, forcibly entering their dwellings, and other extensive authorities, which it is highly their duty to exercise with becoming moderation and humanity. The high constable is as much the officer of the justices of the peace as the constable of the *ville*.

The constable is the proper officer to the justices of peace, and bound to execute his warrants. Hence it has been resolved, that where the statute authorises a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it.

But as the office of constable is by no means judicial, but wholly ministerial, he may execute such warrants, &c. directed to him by deputy, if on account of indisposition, absence, or other special cause, he cannot conveniently do it in person.

The high constables shall, at the general or quarter sessions, if required, account for the general county rate by them received, on pain of being committed to jail till they shall account, and shall pay over the money in their hands, according to the order of the said court, on like pain of imprisonment. And all their accounts and vouchers shall, after having been passed at such sessions, be deposited with the clerk of the peace, to be kept among the records, and be inspected by any justice without fee.

Constables should be very careful to keep in their custody whatever things they take upon felons; the same caution is to be observed in respect of such stolen goods as they take in the execution of such warrants. The law strictly requires this, that they may be produced in evidence upon the trial of the prisoner: for the identity of such things is to be proved upon the constable's oath, as well as



the time when taken, and place where: if therefore he suffer such goods to go even out of his sight, he weakens his evidence, if he do not destroy it; and should the goods be by accident, or otherwise, lost, he is not only answerable to the court for acting wrong, which may defeat the prosecution, but also to the prosecutor for the value of the goods; nor will it be a sufficient plea to the court that he left them in the hands of justice, even by his command; for as they were taken by him, the law requires them at his hands. And as the goods taken on persons charged with felony, or by search-warrants, are, as the law terms it, in abeyance, after the jury have returned their verdict, if the prisoner be convicted, the constable is to deliver such goods to the prosecutor; on the contrary, if the prisoner be acquitted, the goods revert to him, the cause of seizure being discharged. But if any difficulty should arise, the safest way is to pray the direction of the court. The duty of the constable, indeed, absolutely obliges him to produce such goods at the trial; but after this is over, he should be careful how he brings them out of court, lest he should suffer by actions at law from both parties.

An officer who has negligently suffered a prisoner to escape, may take him wherever he finds him, without mentioning any fresh pursuit.

A person found guilty, upon an indictment or presentment, of a negligent escape of a criminal, actually in his custody, is punishable by fine and imprisonment, according to the quality of the offence.

But a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape; so that the offence was but a trespass at the time of the escape: but the officer may be fined to the value of his goods.

An action brought against a constable, headborough, or tithing-man, for any matter done by virtue of their office, shall be laid in the county where the fact was committed, and not elsewhere.

The constable executing a justice's warrant, for levying a penalty, or other sum of money directed by an act of parliament, by distress, may deduct his own reasonable charges of taking, keeping, and selling the goods distrained; returning the overplus on demand.

By 41 *Geo. 3* (*u. k.*) *c.* 78, when special constables shall be appointed in England to execute warrants in cases of felony, two justices may order proper allowances to be made for their expenses, and loss of time, which order shall be submitted to the quarter sessions.

Two justices may, in like manner, order allowances to be made to high constables in England, for extraordinary expenses incurred in the execution of their duties in cases of riot and felony.

The sheriff or steward of the leet, having power to place a constable in his office, has, consequently, a power of removing him. And it has been the practice of the justices of the peace, for good

cause, to displace such constables as have been chosen and sworn by them.

If a constable shall continue more than a year in his office, the sessions may discharge him, and put another in his place, till the lord shall hold a leet; and should the court or judge, refuse to discharge a constable, the King's Bench may compel them by mandamus.

In the manner that constables are chosen, they may be removed, and by the like authority; therefore, if there should be cause to remove an high constable, it has not been thought fit that any one or two justices should do it upon their discretion, but that it should be done by the greater part of the justices of that division, or at the sessions.

*Of London Constables* The constables must be freemen of the city, and nominated by the inhabitants of the ward on St. Thomas's day, confirmed or disallowed at the next wardmote, and afterwards sworn into office at the next court of aldermen, on the Monday ensuing twelfth-day.

They swear to keep the king's peace to the utmost of their power, to arrest affrayers, rioters, and such as make contests to the breach of the peace, and carry them to the house of correction, or compter of one of the sheriffs; and in case of resistance, to make outcry to them, and pursue them from street to street, and from ward to ward, till they are arrested; to search for common nuisances in their respective wards, being required by scavengers, &c. and, upon request, to assist the beadle and raker in collecting their salaries and quarterage, to present to the lord mayor, and ministers of the city, defaults relating to the ordinances of the city. They are to certify to the mayor's court once a month, the names and surnames of all freemen deceased, and also of the children of such freemen, being orphans. They are to certify the name, surname, place of dwelling, profession, and trade, of every person who shall just come into the ward, and keep a roll thereof; for which purpose they are to inquire once a month into what persons are come into the same ward: and if such persons are found to be ejected from any other ward for any misdemeanour, and refuse sureties for their good behaviour, they are to give them and their landlords warning to depart; and on refusal, they may be imprisoned, and the landlords fined a year's rent.

Constables are to keep watch and ward from the 10th of September to the 10th of March, from nine in the evening till seven the next morning; and from the 10th of March to the 10th of September, from ten in the evening till five the next morning. They shall use their best endeavours for preventing fires, robberies, and disorders, and arrest malefactors; and go twice or oftener about their wards in every night; and the watchmen are to apprehend all suspected persons, &c. and deliver them to the constable of the night, who shall carry them before a justice of the peace: constables misbehaving themselves to forfeit 20s. and the lord mayor, or two justices for the city, may hear and determine offences, and



levy penalties by distress and sale of goods, &c. They must place the king's arms, and the arms of the city over their doors; and if they reside in alleys, at the ends of such alleys towards the streets, to signify that a constable lives there.

CONSTRUCTION OF STATUTES—As a due regard to the liberty and property of the subject, as well as to the authority and power of the king, is essential to the well being of the nation, the construction of statutes has been particularly attended to; and various rules have been provided. The following are the most material, as stated by Mr. Justice Blackstone.

1. An affirmative statute does not take away the common law, and the party may make his election, to proceed upon the statute, or at the common law.

2. A negative statute completely takes away the common law, so that it cannot afterwards be made use of upon the same subject.

3. Words and phrases, the meaning of which in a statute has been ascertained, are, when used in a subsequent statute, to be understood in the same sense. Thus, where the 23 *Hen. 6.* says, the sheriff *may* take bail, the judges construed it to mean *shall* take bail; and therefore where a person was indicted for disobeying the 14 *Car. 2. c. 12.* which enacts that overseers *may* make a rate, and an exception was taken that the act did not require them to do it, the court overruled the exception.

In the construction of one part of a statute, every other part ought to be taken into consideration; but the title of a statute is not to be regarded in construing it, because this is no part of the statute; the preamble, however, must be considered, for it is a key to open the words of the makers as to the mischiefs which are intended to be remedied; but this rule must not be carried so far as to restrain the general words of the enacting clause to the particular words of the preamble; although strong words in the enacting part of the statute may extend it beyond the preamble.

5. A saving in a statute which is repugnant to the purview of it, is void; but the purview may be qualified and restrained by the saving.

6. If divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them; for all statutes *in pari materia* are to be construed as one law.

7. If a statute that repeals another is itself afterwards repealed, the first statute is hereby revived, without any formal words for that purpose.

8. Acts of parliament derogating from the power of subsequent parliaments are not binding.

9. Acts of parliament that are impossible to be performed are of no validity, and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are with regard to these collateral consequences, void; but when the words of a statute are doubtful, general usage may be called in to explain them.

**CONTEMPT** is a disobedience to the rules and orders of a court, which hath power to punish such offence.

Attachment lies in these cases to bring the offenders in to answer the contempt; and one may be committed for contempt of the court, where the matter of the contempt is certain, and not doubtful, and in open court, or on affidavit made thereof. If the court makes a rule in trespass and ejectment, that the defendant shall confess lease, entry, and ouster, and the defendant will not do it, so that the plaintiff becomes nonsuit; on the defendant's refusal to pay costs, attachment of contempt is to be granted.

And in the courts at Westminster, the party in contempt appearing on attachment issued, is to enter into a recognizance to answer interrogatories, upon which he is to be examined on oath; and if he do not acquit himself, he shall be fined for his contempt, &c.

A man may be imprisoned for a contempt done in court, but not for a contempt out of court, or a private abuse.

**CONTRACT**, a covenant or agreement between two or more persons, with a lawful consideration or cause. Contracts are twofold; either express or implied. Express contracts, are, where the terms of the agreement are openly uttered, as to pay a stated price for certain goods. Implied, are such as reason and justice dictate, and which, therefore, the law presumes that every man undertakes to perform: thus if a man takes up wares from a tradesman, without any agreement of price, the law concludes, that he contracted to pay their real value.

By the 29 *Car. 2. c. 3. s. 17.* it is enacted, "That no contract for the sale of any goods, wares, and merchandizes, for the price of ten pounds and upwards, shall be good, except the buyer shall accept a part of the goods, so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing, of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised."

**CONVEYANCE**, a deed which passes land from one to another. The most common conveyances now in use are, deeds of gift, bargain and sale, lease and release, fines and recoveries, settlements to uses, &c. A conveyance cannot be fraudulent in part, and good as to the rest; for if it be fraudulent and void in part, it is void in all, and it cannot be divided. Fraudulent conveyances to deceive creditors, defraud purchasers, &c. are void, by stat. 50 *Ed. 3. c. 6.* 13 *Eliz. 5—27.* 27 *Eliz. c. 4.*

**CONVICTION** is either where a man is outlawed, or appeareth and confesseth, or else is found guilty by the inquest.

Summary proceedings are directed by several acts of parliament, for the conviction of offenders, and the inflicting certain penalties imposed by those acts. In those there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed for his judge.

The law implies that there must be a conviction before judgment, though not so mentioned in a statute; and where any statute



makes a second offence felony, or subject to an heavier penalty than the first, it is always implied that such second offence ought to be committed after a conviction for the first. Judgment amounts to a conviction, though it does not follow that every one who is convicted, is adjudged.

A conviction ought to be in the present tense, and not in the time past. A conviction ought to be on an information or claim precedent.

When an act of parliament orders the conviction of offenders before justices of the peace, &c. it must be intended after summons to bring them in, and they may have an opportunity of making their defence; and if it be otherwise, the conviction shall be quashed.

COPARCENARY, an estate held in coparcenary, is, where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law, or particular custom. By common law, as where a person seised in fee-simple or fee-tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they shall all inherit. And these co-heirs are then called coparceners; or, for brevity sake, parceners. Parceners, by particular custom, are, where lands descend, as in gavel-kind, to all the males in equal degree, as sons, brothers, uncles, or other kindred; and in either of these cases, all the parceners put together make but one heir, and have but one estate among them.

COPARTNERSHIP is when two or more persons unite together, and agree to participate in profit and loss, according to their respective shares in a capital or joint stock; but this is absolutely necessary to constitute a copartnership. And whether such copartnerships be public or private, the individual partners are liable for the debts of the joint trade, without limitation, unless where they are incorporated, either by royal charter or by act of parliament. In this case the members are liable only to the amount of their respective shares in such joint stock. But each partner has a lien on the partnership estate for any sums of money advanced by him to, or debts owing to him, from the partnership. And it has been held, that this extends even to property in ships.

Where there is any chattel, house, or real estate, held for the purposes of partnership business, no partner can dispose of more than his own share in them. But with regard to all effects contributed, manufactured, or purchased, to be sold for the benefit of the partners, each partner in the course of trade has an absolute right to dispose of the whole; and such sale is valid on the part of the vendee, if transacted without collusion.

A promise or undertaking to one of several partners in the course of business is construed by law to be made to all of them, and all are entitled to take advantage of it.

If one partner enter into a contract which is contrary to the laws of this country, without the privity or personal knowledge of

his co-partners ; neither the person entering into such illicit contract, nor his co-partners can recover on it. Nor does it make any difference if the party who made the contract lives abroad, if his co-partners reside in England.

And this responsibility of partners for the acts of each other in the course of trade cannot be limited by any agreements, covenants, or provisos, in the articles by which the partnerships are constituted.

If, however, they can shew a disclaimer, they will be relieved from such responsibility: and it seems that even during the subsistence of the partnership, and in the established course of trade, one partner may to a certain degree limit his responsibility. If there should be any particular speculation or bargain proposed which he disapproves of, by giving distinct notice to those with whom his copartners are about to contract, that he will not in any manner be concerned in it, they could not have any claim upon him, as proof of this notice would rebut his *prima facie*, liability.

But though partners are in general bound by the contracts, they are not answerable for the wrongs of each other. If they all join in one trespass, of course they all may be sued, and compelled to make compensation for the injury they have committed ; but this action arises from their personal misconduct, and not from the relation of partnership which subsists between them. With regard to matters quite unconnected with partnership, trade, or business, there can be no question ; and, in general, acts or omissions in the course of the partnership, trade, or business, in violation of law, will only implicate those who are guilty of them. But this rule, however, admits of exceptions: for co-partners, like individuals, are responsible for the negligence of their servants, and if one of the partners act, he is considered in this instance as the servant of the rest. In these cases, the injury is considered as the joint and several injury of all the partners ; so that they may be proceeded against in a body, or one may be singled out, and sued alone for the whole of the damage.

Co-partnership contracts may be dissolved by bankruptcy, death, outlawry, and by attainder for treason or felony. If a partnership be formed for a single dealing or transaction, as soon as that is completed, the partnership is at an end of course. But where a general partnership is entered into for an unlimited time, it may be terminated at any time by either of the parties, provided he acts *bona fide*. If, therefore, either of the partners should think proper to relinquish the partnership, he may do so, provided he does not break off with some sinister view, or does not quit after some particular business is begun, or at an unseasonable time, which might occasion loss and damage to the partnership.

A partnership may also be dissolved by the expiration of the time for which it was originally constituted. It may be dissolved by the award of arbitrators. The gross misconduct of a partner



will induce a court of equity to annul the contract. The insanity of one of the partners, if not of a temporary nature, will produce the same effect.

Where a partnership has been constituted for any definite time, if the business should be conducted after the expiration of that period, without any new arrangement of the concern, it would probably be held, in analogy to the law of landlord and tenant, that the partnership continued under the conditions and covenants contained in the original articles, with a power in either party to put an end to it at pleasure.

COPYHOLD, a tenure for which the tenant had nothing to shew but the copy of the rolls made by the steward, as he enrols and makes remembrances of all other things done in the lord's court; thus a tenant by copy of court-roll, is he who is admitted a tenant of any lands or tenements within a manor, that, time out of mind, by use and custom of the manor, have been demisable, and demised to such as will take the same in fee, or fee-tail, for life, years, or at will, according to the custom of the manor, by copy of court-roll of the said manor.

The customs of manors, differ as much as the humour and temper of the respective ancient lords, so a copyholder, by custom may be tenant in fee-simple, in fee-tail, for life, by the courtesy, in dower, for years, at sufferance, or on condition; subject, however, to be deprived of these estates upon the concurrence of those circumstances, which the will of the lords promulged by immemorial custom, hath declared to be a forfeiture or absolute determination of those interests: nay, in some manors the want of issue, in others the want of issue male, in others the cutting down timber, in others the non-payment of rent or fine. Yet none of these interests amount to freehold; for the freehold of the whole manor abides always with the lord only, who hath granted out the use of occupation, but not the corporeal seisin, or true possession of certain parts or parcels thereof, to these his customary tenants at will.

Where, by special custom, a descent of copyholds may be contrary to the common law, such custom shall be interpreted strictly: but otherwise, the lands must descend according to the rules of the common law.

Copyholds are not transferable by matter of record, even in the king's courts; but only in the court baron of the lord, by surrender and admittance.

If one would exchange a copyhold with another, both must surrender to each other's use, and the lord admit accordingly.

If a man will devise his copyhold estate, he cannot do it by his will, but he must surrender to the use of his will, and in it declare his intent. But when the legal estate is in trustees, a man cannot in that case, surrender the copyhold lands to the use of his will; but they will pass by his will only.

So a mortgager may dispose of the equity of redemption by will, without surrender; for he hath at that time no estate in the land whereof to make a surrender.

A devise of a copyhold to the heir is void ; for where two titles meet, the worthier is to be preferred.

A copyhold may be entailed by special custom, and the intail cut off by recovery or surrender in the lord's court. But a recovery in the lord's court, without custom to warrant it, will not be a bar to the intail ; but a surrender in that case will bar it. But where there are two customs to bar estates tail, the one by recovery, and the other by surrender, either of them may be pursued.

Recovery in the lord's court, differs in nothing that is material, from recoveries of freehold land in the king's court ; but the method of surrender is easier and cheaper.

Surrender, is yielding up the estate by the tenant into the hands of the lord, for such purposes, as in the surrender are expressed. Persons may appoint attorneys for surrendering copyhold or customary estates, of which common recoveries are intended to be suffered.

A steward of a manor, may take a surrender out of the manor, but cannot admit out of the manor. A feme covert is to be secretly examined by the steward, in her surrendering her estate.

Until admittance of the surrendree, the surrenderor continues tenant, and shall receive the profits, and discharge all services due to the lord ; but he cannot revoke his surrender, except in the case of a surrender to the use of his will, which is always revocable. And if the lord will not admit the surrendree, he may be compelled to it by a bill in chancery or mandamus. And this method of conveyance by surrender and admittance, is so essential to the nature of a copyhold estate, that it cannot possibly be transferred by any other assurance. No feoffment, fine, or recovery, in the king's courts, has any operation upon it. Upon admittance, the tenant pays a fine to the lord, according to the custom of the manor, and takes the oath of fealty. If a copyholder do not pay the service due to the lord, or refuse to attend at the lord's court, or to be of homage, or to pay his fine for admittance, or to do suit at the lord's mill, or the like, it is in law a forfeiture.

If there be a tenant for life, remainder in fee, and tenant for life commit a forfeiture, by which his estate for life be forfeited ; the lord enters for the forfeiture, yet this shall not bind him in the remainder, but only the tenant for life.

If a copyholder commit a felony or treason, he forfeits his copyhold to the lord, without any particular custom ; only the king shall first have thereof the year, day, and waste.

**COPYRIGHT.** See **BOOKS.**

**CORN.** It is against the common law of England to buy or sell corn in the sheaf, before it is thrashed and measured ; the reason whereof seems to be, because by such sale, the market is in effect forestalled.

Every person who shall sell or buy corn without measuring, or otherwise than the Winchester measure, sealed and stricken by the brim, shall on the conviction before one justice, on the oath of one witness, forfeit 40s. besides the whole of the corn so sold or



bought, or the value thereof, half to the poor, and half to the informer.

On complaint to a justice, that corn has been bought, sold, or delivered, contrary to the act, the proof shall lie upon the defendant to make it appear by oath of one witness, that he sold or bought the same lawfully: and if he shall fail therein, he shall forfeit, as before mentioned, to be levied by distress and sale.

And if any mayor, or other head officer, shall knowingly permit the same, he shall, upon conviction at the county sessions, forfeit 50*l.* half to the prosecutor, and half to the poor, by distress and sale. For want of distress, to be imprisoned by warrant of the justices, till payment be made.

The last acts now in force to regulate the returns of the prices of grain, are statutes 31*G. 3. c. 30*: 33*G. 3. c. 65*. By the former the statutes 1*Jac. 2. c. 19*: 1*W. and M. c. 12*: 5*G. 2. c. 12*: 10*G. 3. c. 39*: 13*G. 3. c. 43*: 21*G. 3. c. 50*, and 29*G. 3. c. 58*, are all repealed; as also every provision in any other act for regulating the importation of wheat, &c. except such as relate to the making of malt for exportation, and the exportation thereof. So much of the 15*Car. 2.* as prohibits the buying of corn to sell again, and the laying it up in granaries is also repealed.

By the statutes of 51*G. 3. c. 30.* and 33*G. 3. c. 65.* bounties are granted on exportation at certain prices, and the exportation prohibited when at higher prices: the quantity of corn to be exported to foreign countries is settled; the maritime counties of England are divided into districts. The exportation of corn to be regulated in London, Kent, Essex, and Sussex, by the prices at the corn exchange; the proprietors of which are to appoint an inspector of corn returns, to whom weekly returns are to be made by the factors: and he is to make weekly accounts, and transmit the average price to the receiver of the returns, to be transmitted to the officers of the customs, and inserted in the London Gazette. The exportation in other districts and in Scotland, to be regulated by the prices at different appointed places, for which mayors, justices, &c. are to elect inspectors. Declarations are to be truly made by factors of the corn sold by them. Orders of council may be made to regulate importation, or exportation, from time to time: such orders to be laid before parliament respecting the exportation of wheat, and trans-shipping of corn brought coastwise.

By 46*Geo. 3. c. 11.* the act 45*Geo. 3. c. 86. s. 2.* shall not prevent the carrying coastwise, or exporting corn for the use of his majesty's forces, or for the purposes mentioned in 31*Geo. 3. c. 30.* and 33*Geo. 3. c. 65.* although prohibited from being otherwise exported by reason of the price.

By 46*Geo. 3. c. 97.* all bounties and duties payable on the interchange of corn and grain (of the growth of Great Britain or Ireland, 47*Geo. 3. sess. 1. c. 7.*) between Great Britain and Ireland shall cease, and corn and grain may be imported and exported between them whatever the price may be.

But the exporter is to declare before the officer of customs, that

such corn and grain is intended to be imported between the countries, and shall receive a coast cocquet; and no fee shall be taken by any officer of customs on account thereof, on pain of being dismissed, and rendered incapable of serving in the customs, excise, or any revenue office.

Nothing in any acts in force shall prohibit the exportation from Ireland of a supply of corn, and the like, for ship stores, or for provisioning forces or garrisons, or beans for the British forts in Africa, usually supplied from Great Britain, nor prohibit the like quantities mentioned in table C. of the British acts 31 *Geo. 3. c. 30. s. 13.* and 33 *Geo. 3. c. 65.* but if the price be above the price at which the export is allowed, the exporter to any place mentioned in the said table shall declare the place for which the same are exported.

CORODY, a sum of money, or allowance of meat, drink, or cloathing, due to the king from an abbey or other house of religion, whereof he is the founder, towards the reasonable sustenance of such a one of his servants, being put to his pension, as he thinks good to bestow it on. Corodies belonged sometimes to bishops and noblemen from monasteries; but these corodies are now totally fallen into disuse.

CORONER, a very ancient officer at the common law: he called coroner, because he deals principally with the pleas of the crown; and coroners were of old time the conservators of the peace. This officer, ought to be a sufficient person, that is, the most wise and discreet knight, that best would and might attend upon such an office. No coroner shall be chosen, unless he shall have land in fee sufficient, in the same county wherein he may answer to all manner of people. The lord chief justice of the king's bench is the sovereign coroner of the whole realm.

In ancient times, none under the degree of knight were chosen. But as the chief intent was to prevent the choosing of persons of mean ability, it seems the design of it is sufficiently answered, by choosing men of substance and credit; and as the constant usage for several ages past has been accordingly, it seems to be no objection at this day, that the person chosen is not a knight.

By the 28 *Ed. 3. c. 6.* it is enacted, that all coroners of the counties shall be chosen in full counties, by the commoners of the said counties, of the most meet and lawful people that shall be found in the same, to execute the said office. But though they are chosen by the county, it must be pursuant to the king's writ, issuing out of and returnable into chancery; and none but freeholders have a voice at such election, for they only are suitors to the county court. When chosen they shall be sworn by the sheriff, for the due execution of their office.

When any person comes to an untimely death, the township shall give notice thereof to the coroner: otherwise if the body be interred before he come, the township shall be amerced. And if the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced.

When the coroner has received notice, he shall issue a precept



to the constables of the four, five, or six next townships, to return a competent number of good and lawful men of their townships, to appear before him in such a place, to make an inquisition touching that matter. Or he may send a precept to the constable of the hundred. And there must be twelve jurors at the least. If the constables make no return, or if the jurors returned shall not appear, their defaults are to be returned to the coroner, and they shall be amerced before the judges of the assize.

The jury after being sworn, is to be charged by the coroner to inquire, upon the view of the body, how the party came by his death.

Every coroner upon an inquisition before him found, whereby any person shall be indicted for murder or manslaughter, or as an accessory before the offence committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind over the witnesses to the next general gaol delivery to give evidence; and shall certify the evidence, the recognizance, and the inquisition or indictment before him taken and found, at or before the trial, on pain of being fined by the court.

But the coroner cannot inquire of accessaries after the fact. He ought to inquire into the death of all persons dying in prison, that it may be known whether they died by violence or any unreasonable hardships.

*His general power and duty.* Besides his judicial place, the coroner has an authority ministerial, as a sheriff; namely, when there is a just exception taken to the sheriff, judicial process shall be awarded to the coroner for the execution of the king's writ: and in some special cases, the king's original writ, shall be immediately directed to him. He is bound to be present in the county court, to pronounce judgment of outlawry upon the exigent, after *quinto exactus*, at the fifth court if the defendant do not appear.

It is his duty to inquire of treasure that is found, who were the finders, and likewise who is suspected thereof. He may also receive the appeal of an approver, for an offence in the same, or in a different county, and if the appellee be in the same county, he may award process against him to the sheriff till it come to the exigent; but if the appellee be in a foreign county, the coroner cannot award process against him, but must leave it to the justices of a gaol delivery, before whom the appeal is afterwards recorded.

*Punishment for misdemeanour.* Justices of assize and peace, have power to inquire of, and punish the defaults and extortions of coroners.

*His fees.* The coroner shall have for his fee, upon every inquisition taken upon the view of the body slain, 13s. 4d. of the goods and chattels of him that is the slayer and murderer, if he have any goods; and if he have no goods, of such amercement, as should fortune any township to be amerced for the escape of the murderer. But as the said fee of 13s. 4d. is not an adequate reward for the general execution of the said office, therefore for every inquisition, not taken upon view of a body dying in gaol, the coroner shall

have 20s. and also 9d. for every mile he shall be compelled to travel from his usual place of abode to take such inquisition; to be paid by order of the justices in sessions, out of the county rates.

**CORRUPTION OF BLOOD.** See **ATTAINDER.**

**COSTS.** By the statute of Gloucester, 6 Ed. 1. c. 1. it is provided that the demandant may recover against the tenant, the costs of his writ, together with his damage; and that this act shall hold place in all cases, when the party is to recover damages.

Costs of the writ, extends to all legal costs of suit, but not expenses of travel, loss of time, &c.

When double damages are given by act of parliament, the costs should be doubled also; for damages include costs.

Persons suing in *forma pauperis*, shall not pay costs.

If it be an action, wherein there can be no such certifying, as debt, assumpsit, trover, trespass for taking goods, trespass for spoiling goods, trespass for beating a servant, whereby he lost his service, it is out of the statute, and the plaintiff may have full costs.

Where costs are allowed, it is not necessary for the jury to give them, but they may leave it to the court to do it, who are the best able to judge of what costs are fitting to be given. It is the course of the court of king's-bench, to refer the taxation of costs to the proper officer of the court, and not to make any special rules for such matters, except it be in extraordinary cases.

The matter of costs in equity, is not held to be a point of right, but merely discretionary, according to the circumstances of the case, as they appear more or less favourable to the party vanquished.

If costs be refused to be paid, an attachment lies.

The king, and any person suing to his use, shall neither pay nor receive costs.

The 18 Geo. 3. c. 19, authorizes any justice who shall have heard and determined the matter of a complaint made before him, to award such costs to be paid by either party, and in such manner as to him shall seem meet, to the party injured: and if the person so ordered by the justice, shall not forthwith pay, or give satisfaction to the justice, the same shall be levied by distress; and if goods and chattels of such persons cannot be found, the justice shall commit him to the house of correction for the place where such person shall reside: to be kept to hard labour for any time not exceeding one month, nor less than ten days, or till such sum, with the expenses attending the commitment, be first paid.

Provided that upon a conviction of any person upon a penal statute, where the penalty shall be at or exceed the sum of 5*l.* the said costs shall be deducted by the justice, at his discretion, out of the penalty, so that such deduction shall not exceed one-fifth part of the penalty; and the remainder of the penalty shall be divided among the persons who would have been entitled to the whole thereof, if this act had not been made.

Costs double or treble are allowed to defendants sued for acting



under almost every statute relating to officers of justice, customs, or other duties, highways, paving, &c.

**COVENANTS.** A covenant is an agreement made by deed in writing, between two or more persons, to do or not to do some act or thing agreed upon betwixt them.

And covenants are either express in the deed, or implied by law; as if a man demise any thing to another, the law intends a covenant that he shall enjoy it against all incumbrances: then covenants are real, concerning the passing of lands, &c. Or personal, where a man covenants with another to build a house, serve him, &c. Inherent covenants, which tend to the support of the thing granted; covenants collateral, affirmative, or negative, executed already done, or executory to be done.

A covenant is for the most part executory: it must be to do a thing lawful, or it will not be binding; and if the thing to be done be impossible, the covenant is void. Not only parties to deeds, but their executors and administrators shall take advantage of inherent covenants, though not named; and regularly every assignee of the land may take advantage of inherent covenants: also executors and assigns, and their executors, &c. are bound by such covenants, as a covenant to repair, &c. although not named; but if it concerns a thing not in being at the time of the demise, as to make a new wall, &c. the assignee is not bound, unless named in express words; nor is he when named, if the thing to be done doth not concern the thing demised; or in personal contracts, for delivery of goods, &c.

If a man covenant with another to pay him money at a time to come, and do not say to his executors, &c. If he die before the day, his executors or administrators shall have the money. If a man covenant to do any thing, his heir shall not be bound, unless expressly named; but in covenants of lessees to repair, &c. which run with the land, the heir shall have the benefit of them, though not named. And grantees of reversions have the like advantage against termors, by action of covenant, as the lessors and their heirs, &c.

There are some covenants which none but the party and his heirs, may take advantage of; such as concern the inheritance, and descend to the heir, as knit to the estate: but covenants in gross, go to the executors, &c. There may be articles of agreement and covenant, only to be performed by the parties. If some covenants in a deed are good and lawful, and others not; those against law, are void, and the others stand good. Where there is agreement under hand and seal, covenant lies; and where a man is party to a deed, his agreement to pay amounts to a covenant; though the formal words covenant, &c. are wanting.

It is agreed that A. shall pay B. 100*l.* for lands in D. this is a mutual covenant; and covenant lies if B. will not convey. And if a man covenants, he hath good right to grant, &c. and hath no right, it is a breach of covenant. Where there are mutual covenants, and the one not to be performed before a precedent cove-

nant; there the covenant is not suable until the other is performed: but where the covenants are distinct and mutual, several actions may be brought against the parties. If a servant covenant to serve me a year, and I covenant to pay him a sum of money for it, he may have covenant, though he does not serve me; but then I may compel him to serve the time agreed: *Contra*, if I covenant to pay him a sum of money, if he serves me a year; which is a conditional covenant.

Where the intent of the parties can be collected out of the deed or agreement, for doing or not doing of the thing, covenant will lie for it. When an act is to be done according to a covenant, he who pleads performance, ought to do it specially. A covenant for the lessee to enjoy against all men; this extends not to tortious acts and entries, &c. If a man covenants expressly to repair a house, though it be burnt down by accident, he ought to repair it; but he is not so tied by covenant in law. Covenant for repairs lies by the lessor against the lessee, after assignment, &c.

Covenant that lands shall continue of such a value, notwithstanding any act done, or to be done, extends only to the time of the covenant made. A covenant is no duty, nor cause of action, till broken. In a covenant, the last words that are general, shall be expounded by the first words which are special and particular. A latter covenant cannot be pleaded in bar to a former. If one by his own act disables himself to perform a covenant; it is a breach of it. Covenants are most strongly taken against the covenantor, and for the covenantee. A stranger to the deed may not take advantage of a covenant. And if a lease, &c. is not good, there can be no covenant, nor any breach.

Covenants are usually for assuring of land; quiet enjoyment; payment of rent; for repairs, &c. And in articles, a covenant for performance with a penalty, is sometimes inserted: in other cases, bonds for performance are given; and being sued, the jury must find the penalty; but on covenant, damages.

COVERTURE, is when a man and woman are married together; now whatever is done concerning the wife, during the continuance of the marriage, is said to be during the coverture.

And the wife is called a feme covert, and thereby disabled to contract with any one, to the prejudice of herself or husband, without his consent, and confirmation thereof. All things that are the wife's are the husband's; nor hath the wife power over her own person, but the husband: and if the husband alien her land during the marriage, she cannot have remedy during his life.

This is in subjection and obedience to the husband, who is the head of his wife; but the wife of the king is a person exempt from her husband, and not disabled by coverture.

COUNTY COURT. This was anciently a court of great dignity and splendor, the bishop and the earl, with the principal gentlemen of the shire, sitting therein to administer justice, both in lay and ecclesiastical causes. But its dignity was much impaired when the bishop was prohibited, and the earl neglected to attend



it. And in modern times, as the proceedings are removable from hence into the king's superior courts; by writ of *pone*, or *recordare*, this hath occasioned the business of the county court in a great measure to decline.

By the 2 and 3 *Edw. 6. c. 25.* no county court shall be longer deferred than one month from court to court; so that the county court shall be kept every month, and not otherwise. And only twenty-eight-days shall be reckoned to the month. And it may be kept at any place within the county, unless restrained by statute.

The suitors, that is, the freeholders, are the judges of this court; except that in re-desseisin, by the statute of Merton, the sheriff is judge.

The jury in this court ought to be freeholders, but the quantum of their estate is not material.

This court shall hold pleas between party and party, where the debt, or damage, is under 40s.

But in replevin the sum may exceed 40s.

It has not cognizance of trespass *vi et armis*, because a fine is thereby due to the king, which it cannot impose.

But by virtue of a writ of *justicies* the court may hold plea of trespass *vi et armis*, and of any sum, or of all actions personal above 40s.

Causes may be removed from this court by a writ of *recordare*, issuing out of the chancery, directed to the sheriff, commanding him to send the plaint that is before him in his county court (without writ of *justicies*) into the court of king's bench or common pleas, to the end that the cause may be there determined: whereupon the sheriff is to summon the other party to be in that court (into which the plaint is to be sent) at a day certain; and he is to make certificate of all this under his own seal, and the seal of four suitors of the same court.

Causes may also be removed by *pone*, which differs in nothing from a *recordare*, except that it removes such suits as are before the sheriff by writ of *justicies*, and a *recordare* is to remove the suit that is by plaint only, without a writ. And though the plea be discontinued in the county, yet the plaintiff or defendant may remove the plaint into the common pleas or king's bench, and it shall be good, and he shall declare upon the same.

COUNTY RATE, by the 12 *G. 2. c. 29.* the justices at their general or quarter sessions, or the greater part of them (and by 13 *G. 2. c. 18.* justices of liberties and franchises not subject to the county commissioners) shall have power to make one general county rate, to answer all former distinct rates, which shall be assessed on every parish, &c. and collected and paid by the high constables of hundreds to treasurers appointed by the justices; which money shall be deemed the public stock, &c. But appeal lies by the churchwardens and overseers against the rate of any particular parish. County rates are to be raised and employed in the following purposes, viz.

For the repairing of bridges, and highways thereto adjoining, and salaries for the surveyors of bridges. For building and repairing county gaols. For repairing shire halls. For the salary of the master of the house of correction, and relieving the weak and sick in his custody. For the relief of the prisoners in the king's bench and marshalsea prisons, and of poor hospitals in the county, and of those who shall sustain losses by fire, water, the sea, or other casualties, and other charitable purposes for the relief of the poor, as the justices in sessions shall think fit. For the relief of the prisoners in the county gaol. For the preservation of the health of the prisoners. For the salary of the chaplain of the county gaol. For setting prisoners to work. For the treasurer's salary. For salary of persons making returns for the prices of corn. For charges attending the removal of any of the said general county rates by *certiorari*. For money for purchasing lands at the ends of county bridges. For charges of rebuilding or repairing houses of correction, and for fitting up and furnishing the same, and employing the persons sent thither. For charges of apprehending, conveying, and maintaining rogues and vagabonds. For charges of soldiers' carriages, over and above the officers pay for the same, by the several yearly acts against mutiny and desertion, and by the militia act. For the coroner's fee of 9d. a mile for travelling to take an inquisition, and 20s. for taking it. For charges of carrying persons to the gaol, or house of correction. For the gaoler's fees for persons acquitted of felony, or discharged by proclamation. For charges of prosecuting and convicting felons. For charges of prosecuting and convicting persons plundering shipwrecked goods. For charges of maintaining the militia men's families, by the several militia acts. For charges of bringing insolvent debtors to the assizes, in order to their discharge, if themselves are not able to pay. For the charges of transporting felons, or conveying them to the places of labour and confinement. For charges of carrying parish apprentices, bound to the sea service, to the port to which the master belongeth.

By the 12 G. 2. c. 29. the churchwardens and overseers, shall, in thirty days after demand made, out of the money collected for relief of the poor, pay the sum assessed on each parish or place. And if they shall neglect or refuse so to pay, the high constable shall levy the same by distress and sale of their goods, by warrant of two or more justices residing in or near such parish or place. Where there is no poor-rate, the justices in their general or quarter sessions shall by their order direct the sum assessed on such parish, township, or place, to be rated and levied by the petty constable, or other peace officer, as money for the relief of the poor is by law to be rated or levied. The high constables, at or before the next sessions respectively after they have received the money, shall pay the same to the treasurer; and the money so paid, shall be deemed the public stock. And the said high constables shall deliver in a true account on oath (if required) of the money by them received, before the said justices at their general or quarter sessions. The



treasurer shall pay so much of the money in his hands, to such persons as the justices in sessions shall from time to time appoint, for any uses and purposes to which the public stock of any county, city, division, or liberty, is or shall be applicable. And shall deliver in a true account on oath (if required) of his receipts and disbursements, to the justices at every general or quarter sessions, and also the proper vouchers for the same, to be kept amongst the records of the sessions. And the discharge of the said justices, by their order at their general or quarter sessions, shall be a sufficient discharge to the treasurer. And no new rate shall be made, until it appear by the treasurer's accounts or otherwise, that three-fourths of the money collected have been expended for the purposes aforesaid. If the churchwardens and overseers of any parish or place, shall think such parish or place is overrated, they may appeal to the next general or quarter sessions.

COURT, a court is defined to be a place appropriated to the judicial administration of justice. The law has appointed a considerable number of courts, some with a more limited, others with a more extensive jurisdiction; some of these are appropriated to inquiry only, others to hear and determine; some to determine in the first instance, others upon appeal and by way of review.

The most general division of our courts is, into such as are of record or not; those of record, are again divided into such as are supreme, superior, or inferior.

The supreme court of this kingdom, is the high court of parliament, consisting of the king, lords, and commons, who are vested with a kind of omnipotency in making new laws, repealing and reviving old ones; and on the right balance of these, depends the very being of our constitution.

Superior courts of record are again, those that are more or less principal: the more principal ones are the lords house in parliament, the chancery, king's bench, common pleas, and exchequer: the less principal ones are such as are held by commission of gaol delivery, oyer and terminer, assize, nisi prius, &c. by custom or charter, as the courts of the palatine of Lancaster, Chester, Durham; or by virtue of acts of parliament, and the king's commission, as the court of sewers, justices of the peace, &c.

The inferior courts of record, as ordinarily so called, are corporation courts, courts leet, and sheriff torn, &c.

Courts not of record, are the courts baron, county courts, hundred courts, &c.

Also the Admiralty, and ecclesiastical courts, which are not courts of record, but derive their authority from the crown, and are subject to the controul of the king's temporal courts, where they exceed their jurisdiction. All these are bound and circumscribed by certain laws and stated rules, to which in all their proceedings and judicial determinations, they must square themselves.

And here it may be proper to observe, that where a statute prohibits a thing, and appoints that the offence shall be heard

and determined in any of the king's courts of record, it can be proceeded against, only, in one of the courts of Westminster Hall.

Every court of record is the king's court, though the profits may be another's; if the judges of such courts err, a writ of error lies; the truth of its records shall be tried by the records themselves, and there shall be no averment against the truth of the matter recorded. All such courts are created by act of parliament, letters patent, or prescription, and every court, by having power given it to fine and imprison, is thereby made a court of record; the proceedings of which can only be removed by writ of error or *certiorari*.

A court, that is not a court of record, cannot impose any fine on an offender, nor award a *capias* against him, nor hold plea of debt or trespass, if the debt or damages amount to 40s. nor of trespass done *vi et armis*, though the damages are laid to be under 40s.

COURT BARON, is a court which every lord of the manor (anciently called the baron) hath within his own precincts. This court is an inseparable ingredient of every manor; and if the number of the suitors should so fail, as not to leave sufficient to make a jury or homage, that is, two tenants at the least, the manor itself is lost.

The court baron is of two natures; the one is a customary court, appertaining entirely to the copyholders or other customary tenants; and of this the lord, or his steward, is the judge; the other is a court of common law, and is before the freeholders who owe suit and service to the manor, the steward being rather register than judge.

The copyholders or customary court is for grants and admittances upon surrenders and descents, on presentment of the homage or jury. The homage may inquire of the death of tenants after the last court, and who is the next heir; of fraudulent alienation of lands, to defeat the lord of his profits; of rent or service withdrawn; of escheats and forfeitures; of cutting down trees without license or consent; of suit not performed at the lord's mill; of waste of tenant for life; of surcharge of common; of trespass in corn, grass, meadow, woods, hedges; of pound breach; of removing mere stones and land marks; of by-laws not observed and the like. The method of punishment is by amercement.

COURT OF CHANCERY. See CHANCELLOR AND CHANCERY.

COURT OF COMMON PLEAS. See COMMON PLEAS.

COURTS ECCLESIASTICAL, are those courts which are held by the king's authority, as supreme governor of the church, for matters which chiefly concern religion. As to suits in spiritual, or ecclesiastical courts, they are for the reformation of manners; as for punishing of heresy, defamation, laying violent hands on a clerk, and the like; and some of their suits are to recover something demanded, as tithes, a legacy, contract of marriage, &c. and in cases of this nature, the court may give costs, but not damages: the proceedings in the ecclesiastical courts are according to the civil and canon law; they are not courts of record.



COURT OF EXCHEQUER. See EXCHEQUER.

COURT OF HUSTINGS, the highest court of record holden at Guildhall, for the city of London, before the lord mayor and aldermen, the sheriffs and recorder. This court determines all pleas, real and mixed; and here all lands, tenements, hereditaments, rents and services, within the city of London and suburbs of the same, are pleadable in two hustings; one called hustings of the plea of lands, and the other hustings of the common pleas. In the hustings of the plea of lands, are brought writs of right patent, directed to the sheriffs of London. In the hustings of common pleas, are pleaded *writs ex gravi querela*, writs of gravelet, of dower, waste, &c. If an erroneous judgment be given in the hustings, the party grieved may sue a commission out of chancery, directed to certain persons, to examine the record, and thereupon do right.

COURT OF KING'S BENCH. See KING'S BENCH.

COURT OF MARSHALSEA. See MARSHALSEA.

COURT MARTIAL, is a court for punishing the offences of officers and soldiers in time of war.

COURT OF NISI PRIUS. See NISI PRIUS.

COURT OF PIEPOWDER, a court held in fairs to do justice to buyers and sellers, and for redress of disorders committed in them, so called because they are most usual in summer, when the suitors to the court have dusty feet; and from the expedition in hearing causes proper thereunto, before the dust goes off the feet of the plaintiff and defendant. The court of piepowder, may hold plea of a sum above 40s. The steward before whom the court is held, is the judge, and the trial is by merchants and traders in the fair; and the judgment against the defendant shall be *quod americietur*. If the steward proceed contrary to the stat. 17 Ed. 4. he shall forfeit 5l.

COURT OF REQUESTS, was a court of equity, of the same nature with the court of chancery, but inferior to it. This court having assumed great power to itself, so that it became burthensome. In the court of common pleas, it is upon a solemn argument adjudged, that the court of requests was no court of judicature, &c. and by the stat. 16 and 17 C. 1. c. 10. it was taken away.

By 41 G. 3. c. 14. for extending the powers of the courts of requests within the city of London, all debts amounting to 5l. due from any person resident within the jurisdiction of the city, are to be exclusively sued for and recovered. Two aldermen, and not less than twenty inhabitant householders of the several wards and districts are appointed commissioners, and sit in rotation. The process is by summons, and the commissioners have power to award payment by such instalments, as are consistent with the circumstances and ability of the debtor. In this court, an attorney's privilege is of no avail.

COURT OF SESSION IN SCOTLAND. See SCOTLAND.

COURT OF THE LORD STEWARD OF THE KING'S HOUSE. The lord steward, or in his absence, the treasurer and

comptroller of the king's house, and steward of the marshalsea, may inquire of, hear and determine, in this court, all treasons, murders, manslaughters, bloodsheds, and other malicious striking, whereby blood shall be shed in any of the places and houses of the king, or in any other house wherein his royal person shall abide.

**COURTS OF UNIVERSITIES**, these courts are called the chancellor's courts, and are kept by the vice chancellors of Oxford and Cambridge. Their jurisdiction extends to all causes ecclesiastical and civil (except for maihem, felony, and relating to freehold) where a scholar, servant, or minister of the universities, is one of the parties to the suit. They proceed in a summary way, according to the practice of the civil law; and the judges in their sentences follow the justice and equity of the civil law, or the laws, statutes and customs of the universities, or the laws of the land at their discretion. If any erroneous judgment be given in these courts, appeal lies to the congregation; thence to the convocation; and thence to the king in chancery by his delegates.

**COURTS OF WALES**, by 34 and 35 H. 8. c. 26. it is enacted, that there shall be a court of great sessions, kept twice in every year in every of the twelve counties of Wales: and the justices of those courts may hold pleas of the crown in as large a manner as the king's bench, &c. and also pleas of assize, and all other pleas and actions, real and personal, in as large a manner as the common pleas, &c.

Writs of error shall lie from judgments in this great sessions, it being a court of record to the court of king's bench at Westminster. But the ordinary original writs of process from the king's courts at Westminster {do not run into the principality of Wales, though process or execution does, as do also prerogative writs, as writs of *certiorari*, *quo minus*, *mandamus*, and the like.

**CRIMINAL CONVERSATION**. See **ADULTERY**. An action for criminal conversation, is the only civil case where an actual marriage need be proved; for in every other case, general reputation, the acknowledgment of the parties themselves, and reception by their families and friends as man and wife, is *prima facie*, good and admissible evidence of a marriage, though no register whatever be produced.

**CRIME** is a positive breach or disregard of some existing public law, and generally means such offences as amount to felony. Crimes cannot exist before the resolution to do some criminal act, and can only be punished when that resolution can be proved.

**CULPRIT**, is not (as is vulgarly imagined) an opprobrious name given to the prisoner before he is found guilty, but it is the reply of the clerk of arraigns to the prisoner, after he had pleaded not guilty: which plea was anciently entered upon the minutes in an abbreviated form, *non cul'*; upon which the clerk of the arraigns, on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove him so; which is done by a like kind of abbreviation, *cul'prit*, signifying that the king is ready to prove him



guilty (from *cul* that is *culpabilis*, guilty; and *præt præsto sum*, I am ready to verify it.)

**CURATE**, is he who represents the incumbent of a church, parson, or vicar, and officiates divine service in his stead; and in case of pluralities of livings, or where a clergyman is old and infirm, it is requisite there should be a curate to perform the cure of the church. He is to be licensed and admitted by the bishop of the diocese, or by an ordinary, having episcopal jurisdiction; and when a curate hath the approbation of the bishop, he usually appoints the salary too; and in such case, if he be not paid, the curate hath a proper remedy in the ecclesiastical court, by a sequestration of the profits of the benefice; but if he have no license from the bishop, he is put to his remedy at common law, where he must prove the agreement.

**CURSING.** See **SWEARING.**

**CURTESY OF ENGLAND**, is where a man taketh a wife seised in fee-simple, or fee-tail general, or as heiress in 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 land during his life, by the curtesy of England.

Four things are requisite to estate by the curtesy; marriage, seisin, issue, and death of the wife. And if the land descend to the wife, after issue by her; or if the issue be dead at the time of her death, being born alive, he shall be tenant by the curtesy. But if lands be given to a woman, and the heirs male of her body, and she takes husband, and hath issue a daughter, and dies, the husband shall not be tenant by the curtesy; the issue cannot possibly inherit.

Of a bare right, title, use, remainder, &c. a man may not be tenant by the curtesy; nor of seisin in law: but of a rent in fee, or of an advowson, if the wife die before due, or void, the husband may be tenant by the curtesy.

**CUSTOM**, is a duty paid to the king on the importation or exportation of merchandize.

If any person shall cause any goods for which custom is to be paid, to be landed or conveyed away without entry made, and the collectors of the customs agreed with; the chief magistrate of the port, or the place next adjoining, may at any time (within a month after the offence) issue out a warrant for any person with the assistance of a constable, &c. to enter the house in the day-time, where the goods are suspected to be concealed, and in case of resistance to break open the house, and seize the goods.

But there must be information on oath first given to the magistrate, and if a house be searched wrongfully, the party shall recover full damages and costs against such informer.

If a carman or other person shall assist in taking up, landing, shipping, or carrying away any goods, &c. without warrant, or an officer of the customs being present, and the offence shall be proved by the oath of two witnesses before the justice of the peace, such justice of peace may commit such offender till he find sure-

ties for his good behaviour, or be discharged by order of the lord treasurer, &c. and for the second offence to be committed for two months, or till he pay 5*l.* to the sheriff for the use of the king, or be discharged as above.

If any person resist, hinder, affront, or abuse any officer of the customs, or his deputy, in the execution of his office, the offender shall be committed by the next justice, till the next quarter sessions, where he may be fined not exceeding 100*l.* and he is to remain in prison till discharged by order of the exchequer, or discover the person who employed him.

Custom-house officers making false certificates of goods that should have been landed, shall lose their employment, forfeit 50*l.* and suffer one year's imprisonment; and if any officer belonging to the customs takes bribe, or connives at any false entry, he shall forfeit 100*l.* and be incapable of any employment, and the person giving such bribe shall forfeit 50*l.* Persons counterfeiting or falsifying any certificate, return, &c. or other custom-house warrant, forfeit 100*l.* and officers of the customs making collusive seizures, forfeit 500*l.*

Captains and masters, &c. of ships of war, with goods brought from beyond sea, shall not unload such wares into any boat, bottom, or lighter, or lay on land, till entry thereof be made at the custom-house, under penalty of 100*l.*

If any officer of the customs be hindered, wounded, or beaten in the execution of his office, by any person armed with clubs, &c. to the number of eight or more, such offenders shall be transported for any term not exceeding seven years; and if they return, they shall be guilty of felony, and have execution awarded against them.

But if such offender within two months after his offence, and before his conviction, shall discover two or more of his accomplices to the commissioners of the customs, so as they be convicted of the said offence, the discoverer shall have 40*l.* for every offender discovered, and shall himself be discharged.

Any other person discovering, within three months after the offence, &c. shall have the like reward of 40*l.* to be paid by the cashier of the customs.

All seizures of vessels of fifteen tons or under, which shall be made for carrying uncustomed or prohibited goods from ships inwards, or for relanding certificate or debenture goods from ships outwards, &c. shall be determined by any two justices of the peace near the place where the seizure shall be made, who are to issue out their summons, give public notice, &c. and their judgments shall be final, and justices of peace of London and Westminster have the like power in determining such seizures as the justices of any other places.

If any foreign brandy, &c. be imported into this kingdom in any vessel of forty tons or under, (except each seaman two gallons) such vessel and the brandy, or the value thereof shall be forfeited. Boats, pinnaces, and barges, not belonging to the king,



merchants ships, or not licensed by the admiralty, made to row with more than four oars in Middlesex, Surrey, Kent, or Essex, &c. are also liable to forfeiture, and the owners to a penalty of 40*l.*

No customer, comptroller, searcher, surveyor of searchers, or their clerks, deputies, ministers, factors, servants, shall have any ship of their own, use merchandize, keep a wharf, inn, or tavern; or be a factor, attorney, or host to a merchant, in pain of 40*l.* to be divided betwixt the king and the prosecutor.

In every suit, wherein officers of the customs or persons authorized to put in execution the act of navigation, or others acting in aid of them, shall be prosecuted, they may plead the general issue, and give this or the said act in evidence.

Any person entering a claim in a court where prohibited or uncustomed goods are prosecuted, must give security in the penalty of 30*l.* to answer and pay costs occasioned by such claim, and in default thereof the goods shall be recovered.

Fees of custom-house officers allowed by 12 *Car. 2. cap. 4.* are continued till altered by parliament.

Officers of customs embezzling any goods lodged in any warehouse in his custody, forfeit double the value to the party grieved, with full costs.

All officers of the customs shall take an oath before two justices of peace, that they will not receive any reward or gratuity, other than their respective salaries, or the regular fees established by law. And for neglecting or refusing to take the said oath, shall forfeit their office or employment.

The persons administering the said oath, shall certify the same to the next general quarter-sessions of the peace of the proper county, there to be recorded.

**CUSTOM OF LONDON.** The ancient city of London, being the metropolis and chief town for trade and commerce within the kingdom, it was necessary, that it should have certain customs and privileges for its better government, which, though derogatory from the general law of the realm, yet being for the benefit of the citizens, and for the advantage of those who trade to, and from the city, have not only been allowed good, by the judgments in the superior courts, but have also been confirmed by several acts of parliament.

The customs of London differ from all others in point of trial; for if any of the customs be pleaded, and denied, and issue be taken thereupon, the existence of such customs shall be tried by a writ directed to the mayor and aldermen, to certify whether there is such a custom or not, and they shall make their certificate by the mouth of the recorder.

These customs of London, relate to divers particulars with regard to trade, apprentices, widows, orphans, and a variety of other matters; the custom relative to the distribution of a freeman's estate, extends only to cases of intestacy, or express agreements made in consideration of marriage.

**CUTTING AND MAIMING.** By the 37 *Hen. 8. c. 6.* to cut

off the ear or ears of another, otherwise than by authority of law, or mischance, incurs a forfeiture of civil damages, &c. By 22 and 23 *Car. 2. c. 1.* called the Coventry Act, if any person shall on purpose and of malice aforethought, and lying in wait unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any other person, with intent to maim or disfigure him; such person, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy. And by the 43 *Geo. 3. c. 58.* if any person shall wilfully and maliciously stab or cut any of his majesty's subjects with intent to murder, rob, maim, disfigure, or disable him, or to do him some grievous bodily harm, or with intent to resist or prevent the apprehension and detainer of the person so stabbing or cutting, or any of his accomplices for offences for which they might be lawfully apprehended and detained, he, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy: provided that if such acts of stabbing or cutting were committed under circumstances, that if death ensued, the same would not in law amount to the crime of murder, then the person so indicted shall be acquitted.

The striking with the sharp or claw part of a hammer has been held to be a cutting within the statute.

DEACON. the lowest order in the church of England. By the common law, a deacon of any age might be instituted to a parsonage, or vicarage: but by the statute 13 *Eliz. c. 12.* no person under 23 years of age, and in deacon's orders, shall be presented to any benefice with cure. And now by 44 *Geo. 3. c. 43.* it is enacted, that no person shall be admitted a deacon in England or Ireland before he shall have attained the age of 23 years complete, nor be admitted a priest before the complete age of twenty-four. But this statute does not deprive the archbishop of Canterbury or the Archbishop of Armagh of granting faculties to be admitted deacons at earlier ages. While a man is only deacon he can quit his profession for any other, but not so after he is ordained priest. No one can administer the sacrament but a priest; nor can a deacon preach unless he be first licensed by the bishop. If any man obtains orders or a license to preach by money or corrupt practices, the bishop on conferring such orders forfeits 40*l.* and the person receiving them 10*l.* and is incapable of any ecclesiastical preferment for seven years after.

DEAN, an ecclesiastical magistrate, or dignitary, who is next under the bishop, and chief of the chapter, ordinarily in a cathedral church.

There are four sorts of deans and deaneries. The first is a dean who hath a chapter consisting of prebendaries or canons, subordinate to the bishop, as a council assistant to him in matters spiritual, relating to religion, and in matters temporal, relating to the temporalities of his bishopric. The second is a dean who hath no chapter, and yet he is presentative and hath cure of souls, he hath a peculiar, and a court wherein he holds ecclesiastical jurisdiction;



but he is not subject to the visitation of the bishop or ordinary; such is the dean of Battle in Sussex. The third dean is also ecclesiastical, but the deanery is not presentative, but donative, nor hath any cure of souls, but he is only by covenant or condition; and he hath also a court and peculiar, in which he holds plea and jurisdiction of all such matters and things as are ecclesiastical, and which arise within his peculiar, which often times extends over many parishes; such a dean constituted by commission from the metropolitan of the province, is the dean of the Arches, and the dean of Bocking in Essex. The fourth sort of dean, is he, who is usually called the rural dean; having no absolute judicial power in himself, but is to order the ecclesiastical affairs within his deanery and precinct, by the direction of the bishop or the archdeacon; and is a substitute of the bishop in many cases.

**DEATH OF PERSONS.** There is a natural death of a man, and a civil death; natural, where nature itself expires and extinguishes; and civil, where a man is not actually dead, but is adjudged so by law. If any person, for whose life any estate hath been granted, remains beyond sea, or is otherwise absent seven years, and no proof made of his being alive; such person shall be accounted naturally dead; though if the party be afterwards proved living at the time of eviction of any person, then the tenant, &c. may re-enter and recover the profits.

And persons in reversion or remainder, after the death of another, upon affidavit that they have cause to believe such other dead, may move the lord chancellor to order the person to be produced; and if he be not produced, he shall be taken as dead; and those claiming may enter, &c.

**DEBT,** a sum due from one person to another, in consequence of work done, goods delivered, or money or other value, for which reimbursement has not been made.

The non-payment in these cases, is an injury, for which the proper remedy is by action of debt, to compel the performance of the contract, and recover the special sum due.

Actions of debt are now seldom brought but upon special contracts under seal; wherein the sum due is clearly and precisely expressed: For in case of such an action upon simple contracts, the plaintiff labours under two difficulties; first, the defendant has here the same advantages as in an action of detinue, that of waging his law, namely, purging himself of the debt by oath, if he think proper; secondly, in an action of debt, the plaintiff must recover the whole debt he claims, or nothing at all. For the debt is one single cause of action, fixed, and determined; but in an action upon the case, or what is called an *indebitatus assumpsit*, which is not brought to compel a specific performance of the contract, but to recover damages for its non-performance; these damages are in their nature indeterminate, and will therefore adapt and proportion themselves to the truth of the case, which shall be proved; without being confined to the precise demand stated in this declaration.

**DECEIT** is an offence at common law; and all practices of de-

frauding or endeavouring to defraud another of his right, are punishable by fine and imprisonment: and if for cheating, pillory, &c.

There is a writ of deceit for not performing a bargain, or not selling good commodities, &c. And many kinds of frauds and deceits are provided against by statute, relating to bakers, brewers, victuallers, weights and measures, &c. which are liable to penalties and punishments, in proportion to the offence; and persons keeping false weights and measures, are subject to a fine, and to have their weights and measures broke and burnt, &c. And besides this punishment by statute, for selling false weights and measures, the offender may be punished at common law, by indictment.

Persons obtaining any money or goods by counterfeit letters, &c. shall suffer such punishment as the judges shall think fit, under death.

DECLARATION is a shewing in writing of the complaint of the plaintiff against the defendant, wherein he supposeth to have received wrong from the defendant.

It ought to be plain and certain, for the defendant to make answer unto: and set forth the plaintiff and defendant's names, the nature of the action, cause of complaint, manner of it, time and place, and the damage sustained. It is grounded upon 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 they do on a *Latitat* in *B. R.* The plaintiff after the return of the writ, hath two terms to declare; the term in which the writ was returnable being accounted one. If no declaration comes in before the rising of the court the last day of the second term, on a rule given, the plaintiff may be non-suited, and the defendant sign a *non pros*, and have costs. If the defendant appear in person, the plaintiff is to declare in three days.

In *B. R.* you may not regularly declare against a man that is not in *Custodia Mareshalli*, or hath not filed bail, unless he be a privileged person. If one be in custody of the marshal of the court, any person may put in a declaration against him, and he must plead unto it; it is the same where bail is given, any other may declare against him. When a man is in custody, he is bound to answer every one's suit; and on *Habeas Corpus* a stranger to the writ may take notice of the prisoner when turned over to the marshal, though at the suit of another, and declares against him without taking the process.

On a *Latitat* in *B. R.* you can declare against the defendant in as many actions as you think fit; but in *C. B.* you must have one original for every action. An original is issued out in London, and bail put in, and the declaration laid in another county; it is good against the party, but the bail are discharged: but it is otherwise on bill. If one declare upon an obligation, with a *hic in Curia prolat.* he must shew the obligation, on oyer prayed of it by the defendant, or the declaration will not be good. A plaintiff declar-



ing as executor or administrator, is to set forth the probate of the will, and letters of administration, with a *Profert in Curia*, or the declaration is not good.

The plaintiff is to file his declaration; before filed, it is not upon record, to warrant a judgment. 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 according to the rules of court, judgment may be had against him. The plaintiff's attorney is not obliged to set his hand to the declaration; the defendant's attorney must receive it, without knowing him to be the attorney in the cause. On filing declarations, copies are served on the defendants or their attorneys, &c.

A plaintiff may amend his declaration in *B. R.* in matter of form, after a general issue pleaded, before entry, without paying costs, or giving imparlance; but if he amend in substance, he is to pay in costs, or give imparlance; if he amend in substance, after special plea pleaded, he must pay costs, though he would give imparlance. A verdict helps defects in declarations, in matter of form, but not in matter of substance on which no good judgment can be given.

If the plaintiff's attorney delivers a declaration to the defendant's attorney, and afterwards amends it, and tenders another copy with the amendments, the defendant's attorney is not bound to receive it, except the court or a judge order him. A mistake in a declaration, the plaintiff may amend in *C. B.* on notice before the essoyn day, and the defendant shall have no advantage thereof; and, before demurrer, or issue joined, the plaintiff may amend, paying costs. But if pleadings are entered, the plaintiff may not amend; but it is to enter a discontinuance, and proceed *de Novo*.

Where a defendant is taken, or charged in custody, upon any writ out of the courts at Westminster, and imprisoned for want of sureties for appearance, the plaintiff is to declare against him before the end of the next term, and cause a copy to be delivered to the prisoner or gaoler, to which declaration the prisoner is to plead, or the plaintiff to have judgment.

But if the declaration be not entered, or left in the office, before the end of the next term, and affidavit of it made and filed, before the end of twenty days after, or ten days if in Easter term, the prisoner shall be discharged by supersedeas, on entering his appearance.

The plaintiff's attorney is to file his warrant the term he declares; and the defendant the term he appears.

DEED, is a written contract sealed and delivered. It must be written before the sealing and delivery, otherwise it is no deed; and, after it is once formally executed by the parties, nothing can be added or interlined: and therefore, if a deed be sealed and delivered with a blank left for the sum, [which the obligee fills up after sealing and delivery, this will make the deed void.

A deed must be made by parties capable of contracting, and

upon a good consideration ; and the subject matter must be legally and formally set out.

The formal parts of a deed are :

The premises, containing the number, names, additions, and titles of the parties.

The habendum, which determines the estate and interest intended to be granted by the deed.

The reddendum, or reservation, whereby the grantor reserves to himself something out of the thing granted.

A condition, which is a clause of contingency, on the happening of which, the estate granted, may be defeated.

The warranty, whereby the grantor for himself and heirs, warrants or secures to the grantee, the estate so granted.

The covenants, which are clauses of agreement contained in the deed, whereby the contracting parties stipulate for the truth of certain facts, or bind themselves to the performance of some specific acts.

The conclusion, which mentions the execution and date of the deed, or the time of its being given or executed, either expressly or with reference to some day and year before mentioned.

A deed may be either an indenture, or a deed-poll. The former derives its name, from being indented or cut in an uneven manner, so as to tally with the counterparts, of which there ought to be as many as there are parties ; when the several parts of an indenture are interchangeably executed by the several parties, the part or copy, executed by the grantor, is usually called the original, and the rest are counterparts. But of late years the practice is, for all parties to execute every part, which renders them all originals. A deed-poll, of which there is only one part, is so called from its being polled or shaven quite even. A deed-poll is the sole deed of the party who makes it, and the words thereof are said to be his words, and shall bind him only.

All the parts of a deed indented, constitute in law but one entire deed ; but every part has the same operative force as all the parts taken together, and they are deemed the mutual or reciprocal acts of either of the parties, who may be bound by either part of the same, and the words of the indenture may be considered as the words of either party.

If the name of baptism or surname of a party to a deed be mistaken, as John for Thomas, &c. this has been held to be dangerous.

But any mistake, as spelling, &c. not deviating from the substance of the deed, will not render it void.

If a man get another name in common esteem than his right name, any deed made to him under such name, will be valid.

Every deed must be founded upon good and sufficient consideration ; not upon an usurious contract, nor upon fraud or collusion, either to deceive *bona fide* purchasers, or just and lawful creditors ; any of which considerations will vacate the deed, and subject the parties to forfeiture, and in some cases to imprisonment.



A deed also without any consideration is void, and is construed to ensure only to the benefit of the party making it.

Consideration may be express or implied. An express consideration, is where a man contracts to do a certain act for a certain sum of money, or other equivalent act; and an implied consideration, is when it may be enforced by law; thus if a person do any work, or receive any goods from another, the law implies a consideration, which it will enforce, although there was no specific agreement for remuneration.

A deed must be written upon the proper stamps prescribed by the legislature, otherwise it cannot be given in evidence.

The written matter of a deed, must be set forth in a legal and orderly manner, so as that there are words sufficient to explain the meaning of the parties, and at the same time to bind them to the execution of their contract; and of this sufficiency the courts of law are to determine. Although it is not indeed absolutely necessary in law, to have all the formal words which are usually drawn out in deeds, provided there be sufficient words legally and clearly to explain the meaning of the parties, yet as these formally or orderly parts, are calculated to convey the meaning of the parties in the most clear, distinct, and effectual manner, and have been well considered and sanctioned by the wisdom of successive ages, it is prudent not to depart from these without good reason, and the most urgent necessity.

The force and effect which the law of England gives to a deed under seal, cannot exist, unless such deed be executed by the party himself, or by another for him, in his presence, or with his direction; or in his absence, by an agent authorised so to do, by another deed also under seal; and in every such case, the deed must be made and executed in the name of the principal.

A deed takes effect only from the day of delivery, and therefore if it have no date, or a date impossible, the delivery will, in all cases, ascertain the date of it; and if another party seal the deed, yet if the party deliver it himself, he thereby adopts the sealing and signing, and by such delivery makes them both his own.

The delivery of a deed may be alleged at any time after the date; but, unless it be sealed, and regularly delivered, it is no deed.

Another requisite of a deed is, that it be properly witnessed or attested; the attestation is, however, necessary, rather for preserving the evidence, than intrinsically essential to the validity of the instrument.

There are four principles adopted by the courts of law for the exposition of deeds; viz.

That they be beneficial to the grantee or person in whose favour they are intended to operate.

That where the words may be employed, to some interest, they shall not be void.

That the words be construed according to the meaning of the parties, and not otherwise; and the intent of the parties shall be

carried into effect, provided such intent can possibly stand at law.

That they are to be consonant to the rules of law, and deeds shall be expounded reasonably without injury to the grantor, and to the greatest advantage of the grantee. Deeds are further expounded upon the whole; and if the second part contradict the first, such second part shall be void; but if the latter expound or explain the former, which it may, both parts may stand.

In construction of law, the first deed of a person, and the last will stand in force; and where a deed is by indenture between parties, none can have an action upon such deed, but the person who is a party to it. In a deed-pole, however, one person may covenant with another who is not a party, to do certain acts; for the non-performance of which he may bring his action.

Where a man justifies his title under any deed, he ought to produce that deed; if it be alleged in pleading, it must be produced to the court, that it may determine whether the deed contain sufficient words to make a valid contract.

In modern practice, however, the deed is not actually brought into court, but generally remains in the hands of the party's attorney, who gives over and a copy of it, if demanded, to the attorney of the other party.

The stealing of deeds is, by various acts of parliament, made felony.

**DÉER.** Various acts of parliament have at different times been passed for the preservation of deer and other game, of which the following is the substance:

By 28 G. 2. c. 19. if any person shall unlawfully set fire to, burn, or destroy, or assist in so doing, any furze, gorse, or fern in forests or chases kept for the preservation of deer, he shall forfeit a sum not exceeding 5*l.* nor less than 40*s.*; or, on default of payment, be committed to the county gaol for a time not greater than three months, nor less than one.

By the 9 G. 1. c. 22. (called the Black Act) if any person being armed and disguised, shall appear in any forest, chase, park, paddock, or enclosed grounds, where deer are, or have been usually kept, or shall unlawfully hunt, kill, or steal, any red or fallow deer; or if any persons, whether armed or disguised, or not, shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places, in any of the king's forests, or chases, which are enclosed with rails or pales; or in any park, paddock, or ground enclosed, where deer have been usually kept; or shall forcibly rescue any offender, or procure another to join in any of the said offences; he shall be guilty of felony without benefit of clergy.

By the 16 G. 3. c. 50. and 42 G. 3. c. 107. seven years transportation is inflicted on persons, who shall course, hunt, or take in any snare, or kill, wound, or destroy, or attempt so to do, or carry away any red or fallow deer in any forest, chase, purlieu, or ancient walk, whether enclosed or not, or knowingly assist in such offence,



without the consent of the owner of such deer, or without being duly authorized. And if any person wilfully pull down or destroy, or cause to be pulled down or destroyed, the paling or wall of any forest or ground where there are any red or fallow deer, or be discovered with the unlawful possession of any red or fallow deer, such offender incurs several pecuniary penalties, which the nature of this work will not admit to be specified. And as a further preventive against the destruction of deer, the ranger or keeper of other places where deer are kept, is empowered to take from persons trespassing thereupon, all guns, fire-arms, slips, nooses, toils, snares, engines, and dogs, in like manner as game-keepers are empowered by 22 and 23 Car. 2. c. 25. s. 2. to take dogs, nets, and other engines, from persons not duly qualified to carry or use the same, and also to detain and carry before a justice the person having the same; and if any person shall hurt or wound the ranger or keeper, or his assistants, in the exercise of such authority, or attempt to rescue any offender in his custody, he shall be guilty of felony, and transported for seven years.

DEFEASANCE, a condition relating to a deed, as to a recognizance or statute, which being performed by the recognizer, the deed is defeated, and made void, as if it had never been done. The difference between a proviso, or a condition in a deed, and a defeasance, is, that the condition is annexed to, or inserted in the deed or grant; and a defeasance is a deed by itself, concluded and agreed on between the parties, and having relation to another deed.

DEMAND, calling upon a man for any sum or sums of money, or any other thing due. By the several statutes of limitation, debts, claims, &c. are to be demanded and made in time, or they will be lost by law.

There are two manners of demands, the one in deed, the other in law; in deed, as in every *precipe* there is an express demand; in law, as in every entry in land, distress for rent, taking or seizing of goods, and such like acts, which may be done without any words, are demands in law.

Where there is a duty which the law makes payable on demand, no demand need be made; but if there be no duty till demand, in such case there must be a demand to make the duty. Upon a penalty, the party need not make a demand; as 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.

If a person release to another all demands, this is the best release the releasee can have, as he is thereby excluded from all actions, duties, and seizures. But a release of all demands is no bar to a writ of error, to reverse an outlawry.

DEMURRER is a kind of pause or stop, put to the proceedings of an action upon a point of difficulty, which must be determined by the court, before any farther proceedings can be had therein.

He that demurs in law, confesses the facts to be true, as stated by

the opposite party ; but denies that by the law arising upon those facts, any injury is done to the plaintiff, or that the defendant has made out a lawful excuse. As if the matter of the plaintiff's declaration be insufficient in law, then the defendant demurs to the declaration ; if, on the other hand, the defendant's excuse or plea be invalid, the plaintiff demurs in law to the plea ; and so in every other part of the proceedings, where either side perceives any material objection in point of law, upon which he may rest his case.

General demurrer being entered, it cannot afterwards be waved, without leave of the court ; but a special demurrer generally may unless the plaintiff have lost a term, or the assizes, by the defendant's demurring.

And upon either a general or special demurrer, the opposite party avers it to be sufficient, which is called a rejoinder in demurrer, and then the parties are at issue in point of law ; which issue in law, or demurrer, is argued by counsel on both sides ; and if the points be difficult, then it is argued openly by the judges of the court, and if they, or the majority of them concur in opinion, accordingly judgment is given, but in case of great difficulty, they may adjourn into the exchequer chamber, where it shall be argued by all the judges.

DEMURRER TO EVIDENCE, is where a question of law arises thereon, and because juries, by direction of the court, usually find a doubtful matter specially, demurrers upon evidence are now seldom used.

DEMURRER TO INDICTMENTS. If a criminal join issue upon a point of law in an indictment or appeal, allowing the fact to be true as laid therein, this is a demurrer in law : by which he insists that the fact as stated, is no felony or treason, or whatever the crime is alleged to be. But demurrer to indictments are seldom used, since the same advantage may be taken upon a plea of not guilty ; or afterwards in arrest of judgment, where the verdict has established the fact.

DENIZEN. A denizen is an alien born, who has obtained letters patent whereby he is constituted an English subject. A denizen is in a middle state, between an alien and a natural born or naturalized subject, partaking of the nature of both. He may take lands by purchase, or derive a title by descent through his parents or any ancestor, though they be aliens. No natural born subject shall derive a title through an alien parent or ancestor, unless he be born at the time of the death of the ancestor, who dies seized of the estate which he claims by descent ; with this exception, that if a descent shall be cast upon a daughter of an alien, it shall be divested in favour of an afterborn son, and in case of an afterborn daughter or daughter only, all the sisters shall be coparceners. The children born previous to the denization of their parent cannot inherit by descent, whilst those of a foreigner naturalized, are in every respect entitled to the same privileges as British subjects.



DESCENT, or hereditary succession, is the title of which a man on the death of his ancestor, requires his estate by right of representation, as his heir at law: and an estate so descending to the heir, is in law called the inheritance.

Descent is of three kinds; by common law, by custom, or by statute. By common law, as where one hath land of inheritance in fee-simple, and dieth without disposing thereof in his life-time, and the land goes to the eldest son and heir of course, being cast upon him by the law.

Descent of fee-simple by custom, is sometimes to all the sons, or to all the brothers (where one brother dieth without issue), as in gavel-kind; sometimes to the youngest son, as in borough English; and sometimes to the eldest daughter, or the youngest, according to the customs of particular places. Descent by statute is of fee-tail, as directed by the statute of Westminster, 2. *de donis*.

Descent at common law, is either lineal, or collateral: lineal consanguinity, is that which subsists between persons, of whom one is descended in direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards, in a direct ascending line; and between a man and his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation, in this lineal direct consanguinity, constitutes a different degree, reckoned either upwards or downwards; the father is related in the first degree, and so likewise in the son, grandsire and grandson in the second; great-grandsire, and great-grandson in the third. This is the only natural way of reckoning the degrees in the direct line, and therefore universally obtains, as well in the civil and canon, as in the common law.

Collateral kindred answers to the same distinction: collateral relations agreeing with the lineal in this, that they descend from the same stock or ancestor; but different in this, that they do not descend one from another. Collateral kinsmen are therefore such as lineally spring from one and the same ancestor, who is the stirps or root, stipes, trunk or common stock, from whence these relations are branched out. As if a man have two sons, who have each a different issue; both these issues are lineally descended from him as their common ancestor; and they are collateral kinsmen to each other, because they are all descended from this common ancestor, and all have a portion of his blood in their veins, which denominates them *consanguineors*.

Inheritances shall lineally descend to the issue of the person last actually seised, *in infinitum*, but shall never lineally descend.

The male issue shall be admitted before the female; and where there are two or more males in equal degree, the eldest only shall inherit (except where there are particular local customs to the contrary): but the females shall inherit all together, except in case of succession to the crown, which is indivisible; and of succession to dignities and titles of honour: yet where a man holds an earldom to him and the heirs of his body, and dies, his eldest daughter shall not succeed of course to the title of countess, but the dignity is

in suspense or abeyance, till the king shall declare which of the daughters shall have that title.

The law of descents is of great importance in the successions to real property: hence various canons or rules have been laid down. These are stated and amply illustrated in vol. ii. of Justice Blackstone's Commentaries, to which the reader is referred.

DETINUE is a writ which lies where any man comes to goods or chattels either by delivery, or by finding, and refuseth to redeliver them; and it lies only for the detaining, when the detaining was lawful.

In this writ the plaintiff shall recover the thing detained; and therefore it must be so certain, as that it may be specifically known. Therefore it cannot be brought for money, corn, or the like, for that cannot be known from other money or corn, unless it be in a bag or sack, for then it may be distinguishably marked.

But detinue may be brought from a piece of gold of the price or 21s. though not for 21s. in money; for here is a demand of a particular piece.

In order therefore to ground an action of detinue, which is only for the detaining, these points are necessary: 1. That the defendant came lawfully by the goods, as either by delivery to him, or finding them. 2. That the plaintiff have a property. 3. That the goods themselves, be of value. And 4. That they be ascertained in point of identity. Upon this, the jury, if they find for the plaintiff, assess the respective values of the several parcels detained, and also damages for the detention, and the judgment is conditional, that the plaintiff recover the said goods, or (if they cannot be had) their respective values, and also the damages for detaining them.

DETINUE OF CHARTERS. An action of detinue lies for charters which make the title of lands; and the heir may have detinue of charters, although he have not the land. But if they concern the freehold, the action must be in the common pleas, and no other court.

DEVISE. See WILL.

DIGNITY, signifies honour and authority, &c. and may be divided into superior and inferior: as the titles of duke, earl, viscount, baron, &c. are the highest, names of dignity; and those of baronet, knight, esquire, &c. are the lowest order. Nobility only, can give so high a name of dignity, as to supply the want of a surname in legal proceedings: and as the omission of a name of dignity may be pleaded in abatement of a writ, &c. so it may be where a peer who has more than one name of dignity, is not named by the most noble. No temporal dignity of any foreign nation can give a man a higher title than that of esquire.

DIGNITY ECCLESIASTICAL. Ecclesiastical dignities, are those of archbishop, bishop, dean, archdeacon, and prebendary, and the possessor of these dignities are called dignitaries. Of dignities and prebends, Camden reckons 544 in England.

DILAPIDATION, is where an incumbent of a church-living



suffers the parsonage-house or out-houses to fall down, or be in decay for want of necessary 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 committing or suffering any wilful waste, in or upon the inheritance of the church.

By 13 *Eliz. c. 10.* if any ecclesiastical persons, who are bound to repair the buildings, whereof they are seised in right of their place or function, suffer them to fall into decay for want of repair, and make fraudulent gifts of their personal estate, with intent to hinder their successors from recovering dilapidation against their executors or administrators, in such case the successors shall have like remedy in the ecclesiastical court, against the grantee of such personal estate, as he might have against the executor or administrator of the predecessor.

By 14 *Eliz. c. 11.* all monies recovered by dilapidations, shall within two years be employed upon the buildings for which they were paid, on pain of forfeiting double so much as shall not be so employed, to the queen.

**DISFRANCHISEMENT** is the taking away a man's freedom or privilege. Corporations generally have power by their charter or prescription, to disfranchise a member for doing any thing against the duty of his office as citizen or burgess, and to the prejudice of the public weal of the city or borough, and against his oath, which he took when he was sworn a freeman thereof. But the matter which shall be the cause of his disfranchisement, ought to be an act or deed, and not an endeavour or enterprize whereof he may repent, before the execution thereof, and of which no prejudice doth ensue.

**DISSEISIN** is a wrongful putting out of him that is seised of the freehold, which may be effected either in corporeal inheritances, or incorporeal. Disseisin of things corporeal, as of houses and lands, must be by entry and actual dispossession of the freehold. Disseisin of incorporeal hereditaments cannot be an actual dispossession, for the subject itself is neither capable of actual bodily possession, or dispossession, but is only at the election and choice of the party injured; if for the sake of more easily trying the right, he is pleased to suppose himself disseised. And so also even in corporeal hereditaments, a man may frequently suppose himself to be disseised, when he is not so in fact, for the sake of entitling himself to the more easy and commodious remedy of an assise of novel disseisin, instead of being driven to the more tedious process of a writ of entry.

**DISSENTERS.** Before the revolution many statutes were in force against dissenters, but by 1 *W. stat. 1. c. 18.* commonly called the toleration act, it is enacted, that none of the acts made against persons dissenting from the church of England, (except the test acts 25 *C. 2. c. 2.* and 30 *C. 2. stat. 2. c. 1.*) shall extend to any person dissenting from the church of England, who shall at the general sessions of the peace, to be held for the county or place where

such person shall live, take the oaths of allegiance and supremacy, and subscribe the declaration against popery, of which the court shall keep a register; and no officer shall take more than *6d.* for registering the same, and *6d.* for a certificate thereof signed by such officer.

Provided that the place of meeting be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter-sessions; and the register or clerk of the peace shall register on record the same, and give certificate thereof to any one who shall demand the same; for which no greater fee than *6d.* shall be taken: and provided that during the time of meeting the doors shall not be locked, barred, or bolted.

Further, in order to exempt dissenting ministers from the penalties imposed by the 13 and 14 *Car. 2. c. 4*; 15 *Car. 2. c. 6*; 17 *Car. 2. c. 3*; and 22 *Car. 2. c. 1.* they are required to subscribe the articles of religion mentioned in the statute 13 *Eliz. c. 12* concerning the confession of the true christian faith, and the doctrine of the sacraments, with an express exception of those relating to the government and powers of the church, and to infant baptism; or if they scruple subscribing the same, shall make and subscribe the declaration prescribed by the statute 19 *G. 3. c. 44*, professing themselves to be christians and protestants, and that they believe the scriptures to contain the revealed word of God, and to be the rule of doctrine and practice. And if any person shall wilfully, maliciously, or contemptuously disturb any congregation, assembled in any church or permitted meeting-house, or shall misuse any preacher or teacher there, he shall (by virtue of the same statute 1 *W. and M.*) be bound over to the sessions of the peace and forfeit 20*l.*

Protestant dissenting teachers, thus duly qualified, are (by various acts of parliament) declared to be exempted from serving parochial offices, and also from serving in the militia.

Dissenters chosen to any parochial or ward offices, and scrupling to take the oaths, may execute the office by deputy, who shall comply with the law in this behalf. But it seems they are not subject to fine, on refusing to serve corporation offices; for they may object to the validity of their election, on the ground of their own nonconformity.

DISTRESS, in law, is the taking of a personal chattel out of the possession of the wrong doer, into the custody of the person who is injured, to procure a satisfaction for the wrong committed. It is of two kinds; cattle for trespassing and doing damage, or for non-payment of rent or other duties. But the most usual injury for which a distress may be taken, is that of non-payment of rent.

A distress may now be taken for any kind of rent in arrear, the detaining of which, beyond the day of payment, is an injury to him that is entitled to receive it. This is the most common and best remedy for the recovery of rent in arrear; and the effect of it is, to compel the party to replevy the distress, and contest the taking



in an action against the distrainer ; or which is more usual to compound or pay the debt, or duty for which he was distrained.

*Distress infinite*, is a process commanding the sheriff to distrain a person from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of something due, from the party distrained upon. Generally, it is provided that distress shall be reasonable and moderate ; but in case of distress for suit of court, or for defect of appearance, in several cases, where this is the only method of enforcing compliance, no distress can be immoderate ; because be it of what value it will, it cannot be sold, but shall be immediately restored, on satisfaction made.

*Who may distrain for rent.* By the common law and the various statutes in favour of this species of remedy for the recovery of rent, all persons having the reversion or remainder of lands, &c. after the determination of the particular estate, or existing term therein, may of common right distrain for rent in arrear, without any clause for that purpose contained in the lease.

*What may or may not be distrained.* Every thing upon the premises, is liable to the landlord's distress for rent, whether they are the effects of a tenant or a stranger, because of the lien the landlord has on them, in respect of the place where the goods are found, and not in respect of the person to whom they belong.

Things not distrainable, are tools of a man's trade, corn sent to a mill, a horse sent to a smith's shop, or in a common inn, cloth at a tailor's, goods in the hands of a carrier, dogs, rabbits, beasts of the plough, milk, fruit, and things fixed to the freehold. But beasts of the plough, and working tools, if not actually in use at the time, may be distrained, if there be not sufficient without them ; so may wearing apparel not actually in use. Money in a bag sealed may be distrained.

Horses and carriages sent to stand at livery, are distrainable by the landlord.

*Of the time, &c. and manner of taking the distress.* Distress for rent must be in the day-time, for if made at night it will be bad.

Strictly the rent is demandable, and payable, before the time of sun-set, of the day whereon it is reserved. Yet the rent is not due till the last minute of the natural day.

Distress cannot be made therefore, till the day after that, on which the rent is reserved in the lease ; for though payable, it is not strictly due till midnight of the day upon which it is reserved.

Distress cannot be made after the rent has been tendered ; if the landlord come to distrain, the tenant may, before the distress made, tender the arrears ; and if the distress be afterwards taken, it is illegal ; and so if after the distress, and before it is impounded, the tenant tender payment, the landlord ought to deliver up the distress, and if he do not the detainer is unlawful.

Parole authority to distrain is sufficient, or any authority that can be proved.

By 2 Geo. 2. c. 19. landlords may, by the assistance of a peace-

officer of the parish, break open in the day-time, any place where goods are fraudulently removed and locked up to prevent a distress, oath being first made in case it be a dwelling-house, of a reasonable ground to suspect that such goods are concealed therein.

By *stat. 8 Anne, c. 14.* rent accruing due under a lease, must be distrained for, within six months after its determination.

If a tenant fraudulently remove goods off the premises, the landlord may seize them within thirty days. But such seizure can only be made, where the rent was actually due before the removal.

If a landlord seize only a part of the goods, &c. of his tenant for rent, in the name of them all, it will be a good seizure of the whole.

Distresses ought not to be excessive, but in proportion to the duty distrained for.

The remedy for excessive distresses, is, by a special action on the *stat. of Malbridge*, for an action of trespass is not maintainable upon this account, it being no injury at common law.

Where any distress shall be made for rent justly due, and any irregularity or unlawful act shall be afterwards committed by the party distraining, or his agents; the distress itself shall not on that account be deemed unlawful, nor the party a trespasser from the first, but the persons aggrieved shall recover full satisfaction for the special damage sustained by such irregularity, and no more, with full costs of suit.

*How a distress is to be disposed of.* Persons distraining for rent, may impound the distress on any convenient part of the land, chargeable with the distress; otherwise the goods must be removed to a pound covert, and notice given where they are, unless the tenant consent to a person remaining in possession on the premises.

All living chattels distrained, are regularly to be put in the pound covert, because the owner, at his peril, is to sustain them, and therefore they ought to be put in such an open place, as that he may have resort to them for that purpose.

Household goods, and such other things as would be damaged by the weather, must be impounded in the pound covert, otherwise, if they be damaged, the distrainer will be answerable for the loss.

If the distress for rent die, or be damaged in the pound, without any default of the distrainer, he may make a fresh distress.

By 2 *W. and M.* it is provided, that where any goods or chattels shall be distrained for rent due on any demise, lease, or contract whatsoever, and the owner shall not, within five days next after such distress taken and notice thereof, and of the cause of the taking left at the dwelling-house, or other most notorious place on the premises charged with the rent, replevy the same, that then at the expiration of the said five days, the distrainer may with the assistance of the sheriff, under-sheriff, or constable, cause the goods and chattels so distrained to be appraised by two sworn appraisers, and sold for the best price that can be got for the same, towards satis-



faction of the rent for which the said goods and chattels have been distrained, and the costs and charges of such distress, appraisement, and sale, leaving the overplus, if any, in the hands of the said sheriff or constable, for the use of the owner.

By *stat. 2 W. c. 5.* on any pound-breach, or rescous, of goods distrained for rent, the person grieved thereby shall, in a special action on the case, recover treble damages and costs against the offender, or against the owner of the goods, if they are afterwards found to have come to his use or possession.

**DISTRESS FOR PENALTIES**, by *27 Geo. 2. c. 20. s. 1.* In all cases where any justice of the peace shall be required or empowered by any act of parliament, to issue a warrant of distress for the levying any penalty inflicted, or any sum of money directed to be paid by such act; it shall be lawful for the justice granting such warrant therein to order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty, or sum of money for which the distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

**DISTRESS OF THE KING.** By the common law, no subject can distrain out of his fee or seignior, unless cattle are driven to a place out of the fee, to hinder the lord's distress, &c. But the king may distrain for rent service, or fee farm in all the lands of the tenant, wheresoever they be, not only on lands held of himself, but others, where his tenant is in actual possession, and the land manured with his own beasts. (See also **LANDLORD.**)

**DISTRIBUTION OF INTESTATE'S EFFECTS**, after payment of the debts and funeral expenses of the deceased, is to be made according to the *22 and 23 Car. 2. c. 10.* (explained by the *29 Car. 2. c. 30.*) after the expiration of one whole year from the death of the intestate, be distributed in the manner following, viz.

If the deceased leave a wife and children, one third of his estate is to be given to the widow, and the residue to the children in equal proportions, or if any of them be dead, to their representatives, that is their descendants. But by the aforesaid statute, no representatives are admitted amongst collateral relations, beyond nephews and nieces of the deceased. If there be no children, nor lineal descendants of children, one moiety shall go to the widow, and the residue to the nearest of kin to the deceased, and their representatives. If there be no wife, then the whole shall be distributed amongst the children and their representatives.

The *22 and 23 Car. 2. c. 10.* also enacts, that if any child, other than the heir at law, who shall have been portioned, or otherwise provided for by the father during his life-time, to the amount equal to the distributive share of the other children, he shall be excepted from this distribution, and if he shall have been in part provided for, he shall only have so much of the distributive share, as shall make his portion equal to the rest. But the heir at law being

excepted out of the statute, will have an equal distributive part of the personal property of the deceased; notwithstanding any land he may take by descent or otherwise.

If there be no wife or children living, nor representatives of children deceased, the whole is to be given to the father of the deceased. If he have no father living the whole shall go to the mother, and brothers and sisters of the deceased, in equal proportions, and the representatives of the brothers and sisters deceased. If there are neither of these, the whole will go to the mother. If there are brothers and sisters and children of such, but no mother, the whole will be given to such brothers and sisters, or their children. But if there are neither of the before-mentioned kindreds of the deceased living, then the whole shall go to the grandfather or grandmother. After these, uncles and aunts, together with the nephews and nieces of the deceased, are admitted in equal proportions.

If all the above mentioned persons shall fail, than the whole shall go to the next nearest of kin to the deceased who shall be living; and in this distribution no distinction is made between the whole and the half blood of the deceased.

**DIVORCE**, a separation of two *de facto* married together; of which there are two kinds; one *a vinculo matrimonii*, from the very bond of marriage, and the other *a mensa et thoro*, from bed and board.

Causes for separation *a vinculo*, are consanguinity or affinity within the degrees prohibited, also impuberty or frigidity; where the marriage was merely void *ab initio* and the sentence of divorce only declaratory of its being so. This divorce enables the parties to marry again; but in the other case a power for so doing must be obtained by act of parliament.

The woman divorced *a vinculo matrimonii*, receives all again she brought with her.

Divorce *a mensa et thoro*, is where the use of matrimony, as the use of cohabitation of the married persons, on their mutual conversation, is prohibited for a time, or without limitation of time. And this in cases of adultery, cruelty, or the like; in which case the marriage having been originally good, is not dissolved or affected as to the *vinculum* or bond.

The woman under separation by this divorce, may sue by her next friend; and she may sue her husband in her own name for alimony.

But the children which she hath after the divorce, shall be deemed bastards; for a due obedience to the sentence will be intended, unless the contrary be shewn.

**DOGS.** The owner of a dog is bound to muzzle him, if mischievous, but not otherwise; and if a man keep a dog that is known to bite cattle, &c. if, after notice given to him of it, his dog shall do any hurt, the master shall answer for it.

By 10 Geo. 2. c. 18. persons stealing dogs from the owner or person intrusted therewith, or selling, buying, receiving, or detain-



ing dogs, knowing the same to be stolen, and convicted on the oath of one witness before two justices, shall pay not more than 30*l.* nor less than 20*l.* for the first offence, with charges, and on non-payment may be committed for twelve months, and not less than six.

For the second offence to pay 50*l.* and not less than 30*l.* with charges, one moiety to the informer, and the other to the poor; and on non-payment may be committed for eighteen months, and not less than twelve, and to be publicly whipped in three days.

Search may be made for dogs and skins stolen, and the person in whose custody found, liable to the same penalties; appeal lies to the quarter-sessions, where costs may be given, but no certiorari.

DOWER, the portion which a widow hath of the lands of her husband, after his decease for the sustenance of herself and the education of her children.

To the consummation of dower, three things are necessary, viz. marriage, seisin, and the husband's death.

There were formerly five kinds of dower in this kingdom, viz. 1. *Dower by the common law.* 2. *Dower by custom.* 3. *Dower ad ostium ecclesiæ.* 4. *Doverex assensu patris,* and 5. *Dower de la plus belle.* But of all these kinds of dower, only the two first are now in use.

*Dower by the common law,* is a third part of such lands or tenements whereof the husband was sole seised in fee simple, or fee tail, during the marriage, which the wife is to enjoy during her life; for which there lies a writ of dower. (See DISTRIBUTION OF INTESTATE'S EFFECTS.)

*Dower by custom.* This kind of dower varies according to the custom and usage of the place, and is to be governed accordingly; and where such custom prevails the wife cannot wave the provision thereby made for her, and claim her thirds at common law, because all customs are equally ancient with the common law itself.

*Dower ad ostium ecclesiæ,* is where a man of full age, seised of lands in fee, after marriage, endows his wife at the church door, of a moiety, a third, or other part of his lands, declaring them in certainty; in which case, after her husband's death, she may enter into such lands without any other assignment, because the solemn assignment at the church door, is equivalent to the assignment *in pais* by metes and bounds; but this assignment cannot be made before marriage, because before she is not entitled to dower.

*Dower ex assensu patris,* is where the father is seised of lands in fee; and his son and heir apparent after marriage endows his wife by his father's assent, *ad ostium ecclesiæ,* of a certain quantity of them; in which case after the death of the son, his wife may enter into such parcel without any other assignment, though the father be living; but this assent of the father's must be by deed, because his estate is to be charged *in futuro,* and this may likewise be of more than a third part.

The dowers *ad ostium ecclesiæ*, or *ex assensu patris*, if the wife enter and assent to them, are a good bar of her in common law; but she may if she will, wave them and claim her dower at common law, because being made after marriage, she is not bound by them.

*Dower de la plus belle*, is, where there is a guardian in chivalry, and the wife occupies lands of the heir as guardian in soccage; if the wife bring a writ of dower against such guardian in chivalry, he may shew this matter, and pray that the wife may be endowed *de la plus belle* of the tenements in soccage; and it will be adjudged accordingly; and the reason of this endowment was to prevent the dismembering of the lands holden in chivalry, which are *pro bono publico*, and for the defence of the realm.

After judgment given, the wife may take her neighbours, and in their presence endow herself of the *plus belle*, or fairest part of the tenements, which she hath in soccage for her life.

In order that a woman may be endowed, she must be the actual wife of the party at the time of his decease. If she be divorced *a vinculo matrimonii*, she shall not be endowed; for where there is no marriage, there is no dower.

If a marriage be celebrated *bona fide* in Scotland, this will entitle the woman to dower in England; and the lawfulness of such marriage is triable by a jury in England.

By *Mag. Chart. 9 Hen. 3. c. 7.* a widow shall immediately after her husband's death have her marriage inheritance; and she shall remain in the chief house of her husband forty days, within which time dower is to be assigned her; and for her dower she shall be allowed the third part of all the land which was her husband's in his lifetime, except she were endowed of less at the church door.

By *20 Hen. 3. c. 1.* a woman deforced of her dower, or quarantine, shall recover damages, *viz.* the value thereof from her husband's death.

Widows may devise the crops growing upon the dower, and other tenements, saving the lord's services.

By *3 Ed. 1. c. 49.* a writ of dower shall not abate, because the widow has received dower of another man, before the writ was brought, unless she has received part of her dower of the tenant himself, and in the same *vill*.

By *6 Ed. 1. c. 7.* if tenant in dower aliens in fee or for life, the heir shall have present recovery by writ of entry.

DRUNKENNESS, is an offence for which a man may be punished in the ecclesiastical court, as well as by a justice of peace.

By statute *4 Jac. 1. c. 5.* and *21 Jac. 1. c. 7.* if any person shall be convicted of being drunk by the view of the justice, oath of one witness, or confession, he shall forfeit five shillings for the first offence, to be levied by distress within a week after conviction, and for want of distress, to sit in the stocks six hours.

And for the second offence to be bound with two sureties in 10*l.* to be of the good behaviour, or be committed.



The prosecution to be within six months after the offence.

If an alehouse-keeper shall be convicted as above of drunkenness, he shall be disabled to keep an alehouse for three years.

The inferior officer neglecting to levy the penalty forfeits 10*l.* to be levied and disposed as the penalty itself.

The prosecution on 4 *Jac.* 1. c. 5. was to be, and is still, before justices of the peace in their sessions by way of indictment, where the offender must be convicted, but by 21 *Jac.* 4. *J.* one justice hath power to convict the offender as above-mentioned.

Being a drunkard, cause to remove a magistrate.

**DUELLING.** A duel is a fighting between two persons, upon some quarrel precedent; wherein if a person is killed, both principal and seconds are guilty of murder.

If two persons meet and fight, upon a former quarrel, so long after in which it may be presumed their blood was cooled, and one killeth the other, though he had declined to meet him before, he is guilty of murder. If one challenges another, who refuses to meet him, but says 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 kills him, it is only manslaughter. And if the person challenged refuses 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 in his own defence.

Challenges are unlawful; and barely to challenge another, by word or letter, to fight a duel, is a great offence, punishable by fine and imprisonment.

Also to be the messenger of such a challenge, or to provoke another to send it, is a great offence.

**DURESS,** is where one is wrongfully imprisoned, or restrained contrary to law, till he seals a bond, or deed to another: and where a man is threatened to be killed or wounded, if he do not do it.

A bond or deed so obtained, is by duress, and void. And if a person threaten another to make a deed to a third person, the deed shall be void, as if such third person had made the threatening. If one under a just fear of being imprisoned, killed, &c. enters into a bond to him that menaces him, it is *duress per minas*; and may be pleaded to avoid the bond: but it must be a threatening of life, or member, or of imprisonment; not of a battery only, or to take away goods, &c.

A man is imprisoned until he makes a bond at another place, afterwards he does so when at large, it is by duress. But if a man be arrested, on action, at the suit of another, if he makes a bond to stranger, this is not duress; but if he make it to the plaintiff, it may be duress.

A son shall avoid the action, for unlawful imprisonment of the father; a husband, by reason of unlawful imprisonment of the wife, &c. Obligations, &c. obtained of women, by force, to marry

those to whom made, or otherwise, unless for a due debt, are void.

And a marriage had by duress, is voidable.

DYERS. By stat. 13 G. I. it is enacted, that if any person shall in England dye black any bays, or other woollen goods for mather blacks, not being dyed throughout with woad, indigo, and mather only, or shall dye black any cloths, long ells, bays, or other woollen goods for woaded blacks, not being woaded throughout, he shall forfeit, viz.

For every long bocking bays 44s. For every Colchester or short bays, 22s. For every cloth deceitfully dyed black, without being woaded throughout, 40s. For every piece of bays so deceitfully dyed, 30s. For every Colchester or short bays, 12s. For every perpetuana or stuff, 4s.

All woollen goods truly mathered black, shall be marked with a red and blue rose, and all woollen goods truly woaded black throughout shall be marked with a blue rose only; and if any shall counterfeit any of the said marks, or shall affix any such marks to any woollen goods deceitfully dyed, he shall forfeit 4l. for every piece of goods to which such marks shall be affixed.

If any person use any logwood in dyeing of blue, he shall forfeit 40s. for every piece of cloth so dyed: for every long piece of bocking bays, 22s. For every Colchester or short bays, 12s. and for every perpetuana or stuff, 4s.

All dyers of woollen cloth or stuffs within the city of London, or within the weekly bills of mortality, or within ten miles compass of the city, shall be subject to the examination, and inspection of the dyers of London; and the said company may appoint skilful men to be searchers within their limits, and out of their limits: the justices at the quarter-sessions for any county or place, shall appoint searchers; the searchers, taking to their assistance a constable or peace-officer at seasonable times of the day, may enter the shop or workhouse of any persons using the trade of dyeing, or of any person concerned in the dyeing woollen goods, or in fixing such marks, to search and examine all cloths, bays, &c. and if any oppose them, he forfeits 10l.

All offences against this act, where forfeitures exceed 5l. shall be recovered by action of debt, &c. and where the forfeitures shall not exceed 5l. the offence shall be examined by two or more justices where the offence shall be committed, such justices not being concerned in the matter of complaint, and all forfeitures within ten miles of London shall go, one moiety to the informer, and the other to the company of dyers; and beyond such compass, the whole shall go to the informer.

And if any offender shall not pay the penalty, where the same shall not exceed 5l. by twenty days after conviction, the justices may issue their warrants to the constable to levy it by distress, and where no distress can be found, they commit the offender to the house of correction, not exceeding three months.

All prosecutions shall be commenced within forty days next



after the offence committed or discovered; and if any person find himself aggrieved by the justices' judgment, he may appeal to the next quarter-sessions, giving sufficient notice of the appeal, whose determination there shall be final, and they may allow reasonable costs to either party.

If any suit be commenced against any person for any thing he shall do in the execution of the powers of this act granted, the defendant may plead the general issue, and on verdict, &c. recover treble costs.

This act shall be allowed as a public act, in all courts and places of this kingdom.

**EAST INDIA COMPANY**, a corporation or united company of merchants of England trading to the East Indies; which name is given to them in stat. 6 *Anne. c. 17. s. 13.* more explicitly according to their charter and adjustment of their rights, by stat. 9 and 10 *W. 3. c. 44. s. 61.* trading into and from the East Indies, in the countries and ports of Asia and Africa, and into and from the islands, ports, havens, cities, creeks, towns, and places of Asia, Africa, and America, or any of them beyond the Cape of Good Hope, to the straights of Magellan, where any trade or traffic of merchandize is or may be used and had, to and from every of them.

The temporary rights of the company consist of 1st. the sole and exclusive trade with India, and other parts within the limits already described; so that no other of the king's subjects can go thither, or trade there, but by permission of the company; or pursuant to the directions of stat. 33 *G. 3. c. 52.* 2dly, They have the administration of the government and revenues of the territories of India, acquired by their conquests during their term in the exclusive trade; subject nevertheless to the various checks and restrictions contained in the several statutes, which vest that administration in them.

The rights of perpetuity, are to be a body corporate and politic, with perpetual succession; to purchase, acquire, and dispose at will of lands and tenements in Great Britain, so that the value therein do not exceed 10,000*l.* per annum; to make settlements to any extent, within the limits of their exclusive trade; build forts and fortifications; appoint governors; erect courts of judicature; coin money; raise, train, and muster forces at sea and land; repel wrongs and injuries; make reprisals on the invaders or disturbers of their peace; and continue to trade within the said limits, with a joint stock for ever, although their exclusive right of trading shall be determined by parliament.

The only privileges they can be constitutionally deprived of, are those of trading to the exclusion of others, and of governing the countries, and collecting and appropriating the revenues of India.

**ECCLESIASTICAL COURTS.** See **COURTS ECCLESIASTICAL.**

**EJECTMENT.** An ejectment is a mixed action, by which a lessee for years, when ousted, may recover his term and damages; it is real in respect of the lands, but personal in respect of the

damages. Since the disuse of real action, this mixed proceeding is become the common method of trying the title to lands or tenements.

The modern method of proceeding in ejectment, entirely depends on a string of legal fictions; no actual lease is made; no actual entry by the plaintiff; no actual ouster by the defendant; but all are merely ideal for the sole purpose of trying the title. To this end, a lease for a term of years is stated in the proceedings, to have been made by him who claims title to the plaintiff, who is generally an ideal fictitious person, who has no existence; though it ought to be a real person to answer for the defendant's costs. In this proceeding which is the declaration, (for there is no other process in this action) it is also stated, that the lessee, in consequence of the demise to him made, entered into the premises; and that the defendant who is also now another ideal fictitious person, and who is called the casual ejector, afterwards entered thereon, and ousted the plaintiff; for which ouster the plaintiff brings this action. Under this declaration is written a notice, supposed to be written by this casual ejector, directed to the tenant in possession of the premises; in which notice the casual ejector informs the tenant, of the action brought by the lessee, and assures him, that as he the casual ejector, has no title at all to the premises, he shall make no defence, and therefore he advises the tenant to appear in court, at a certain time, and defend his own title, otherwise he, the casual ejector, will suffer judgment to be had against him, by which the actual tenant will inevitably be turned out of possession.

The ancient way of proceeding, was by actually selling a lease on the premises by the party in interest who was to try the titles; and this method is still in use in the following cases:

First, where the house or thing for which ejectment is brought is empty.

Secondly, when a corporation is lessor of the plaintiff, they must give a letter of attorney to some person to enter and seal a lease on the land; for a corporation cannot make an attorney or a bailiff except by deed, nor can they appear but by making a proper person their attorney by deed; therefore they cannot enter and demise upon the land as natural persons can.

Thirdly, when the several interests of the lessor of the plaintiff are not known, for in that case it is proper to seal a lease on the premises; lest they should fail in setting out in their declaration, the several interest which each man passes.

Fourthly, where the proceedings are in an inferior court, they must proceed by actually sealing a lease, because they cannot make rules confess lease, entry, and ouster, inasmuch as inferior courts have not authority to imprison for disobedience to their rules.

It is a general rule, that no person can in any case, bring an ejectment, unless he have in himself at the time, a right of entry; for although by the modern practice, the defendant is obliged by rule of court, to confess lease, entry, and ouster, yet that rule was



only designed to expedite the trial of the plaintiff's right, and not to give him a right which he had not before; and therefore, when it happens that the person claiming title to the lands, has no right of entry, he cannot maintain his action.

The damages recovered in these actions, though formerly their only intent, are now usually (since the title has been considered as the principal question (very small and inadequate, amounting commonly to one shilling, or some other trivial sum. In order therefore to complete the remedy, when the possession has been long detained from him that has right, an action of trespass also lies, after a recovery in ejectment to recover the mesne profits which the tenant in possession had wrongfully received; which action may be brought in the name of either the nominal plaintiff in the ejectment, or his lessor, against the tenant in possession, whether he be made party to the ejectment, or suffer judgment to go by default.

**ELECTION OF MEMBERS OF PARLIAMENT.** *Qualification of the candidates.* No member shall sit or vote in either house of parliament, unless he be twenty-one years of age.

They must not be aliens born: they must not be any of the twelve judges; because they sit in the lord's house. But persons who have judicial places in the other courts, ecclesiastical or civil, are eligible. Nor of the clergy; the reason assigned for which, is, that they might sit in the convocation. Nor persons attainted of treason or felony, for they are unfit to sit any where.

By the 30 C. 2. stat. 2. c. 1. and 1 G. 1. c. 13. in order to prevent papists from sitting in either house of parliament, no person shall sit or vote in either, till he hath in the presence of the house, taken the oaths of allegiance, supremacy, and abjuration, &c.

Sheriffs of counties, and mayors and bailiffs of boroughs, are not eligible in their respective jurisdictions, as being returning officers; but the sheriff of the county may be chosen knight of another.

By several statutes, no person concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury; nor any of the officers following, viz. commissioners of prizes, transports, sick and wounded, wine licenses, navy and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licenses, hackney-coaches, hawkers and pedlars; nor any persons that hold any new office under the crown, created since 1705, are capable of being elected.

But this shall not extend to, or exclude the treasurer or comptroller of the navy, secretaries of the treasury, secretaries to the chancellor of the exchequer, secretaries of the admiralty, under secretary of state, deputy paymaster of the army, or any person holding any office for life; or so long as he shall behave himself well in his office.

By the 6 *Ann. c. 7. s. 26.* if any member shall accept an office of profit under the crown, except an officer of the army or navy accepting a new commission, his election shall be void: but he shall be capable of being re-elected.

No person having a pension from the crown during pleasure, shall be capable of being elected.

By the 22 *G. 3. c. 45.* no contractor with the officers of government, or with any other person for the service of the public, shall be capable of being elected, or of sitting in the house, so long as he holds any such contract, or derives any benefit from it. But this does not extend to contracts with corporations, or with companies, which then consisted of ten partners; or to any person to whom the interest of such a contract shall accrue by marriage or operation of law, for the first twelve months. And if any person 'disqualified' by such a contract shall sit in the house, he shall forfeit 500*l.* for every day; and if any person who engages in contract with government, admit any member of parliament to a share of it, he shall forfeit 500*l.* to the prosecutor.

No person shall be capable to sit or vote in the house of commons, for a county, unless he have an estate freehold or copyhold, for his life, or some greater estate, of the clear yearly value of 600*l.* nor for a city or borough, unless he have a like estate of 300*l.* and any other candidate or two electors, may require him to make oath thereof at the time of election, or before the day of the meeting of parliament; and before he shall vote in the house of commons, he shall deliver in an account of his qualification, and the value thereof under his hand, and make oath of the truth of the same. But this shall not extend to the eldest son or heir apparent of a peer, or of any person qualified to serve as knight of a shire, nor to the members of either of the two universities.

By 41 *G. 3. c. 52.* all persons disabled from sitting in British parliaments shall be disabled from sitting in the united parliament as members for Great Britain. And all persons disabled from sitting in Irish parliaments shall be disabled from sitting in Ireland. But persons disabled by British statutes shall not hereby be enabled to sit for Ireland nor *econtra.* Persons who shall hold certain places in Ireland shall be disabled from sitting in any future parliament of the united kingdom: viz. commissioners of customs, excise, and stamps (except treasury), commissioners of appeals, commissioners of accounts, army agent contractors (except members of trading companies, as such;) deputies, or clerks in the treasury, auditors, tellers, or chancellors of the exchequer's offices, except the secretary of the chancellor, or of the commissioners of stamps, or appeals. Persons holding new places under the lord lieutenant shall, in future be disabled. Disabled persons, presuming to sit in parliament, shall incur the penalties under former British or Irish acts; or if disabled under this act, shall forfeit 500*l.* per day. This act shall not extend to offices held for life or during good behaviour, except the commissioners of imprest accounts, and persons concerned in the managing, collecting, or farming duties. Members



accepting any offices whatever from the king, or lord-lieutenant of Ireland shall vacate their seat.

By 41 G. 3. c. 101. the act 33 G. 2. c. 20. is extended to members to the united parliament for England, Wales, Berwick, or Ireland; and the qualification may be situate either in England, Wales, Berwick, or Ireland.

*Qualifications of Electors.* No person shall be admitted to vote under the age of twenty-one years. This extends to all sorts of members, as well for boroughs as counties.

Every elector of a knight of a shire, shall have freehold to the value of 40s. a-year within the county; which is to be clear of all charges and deductions, except parliamentary and parochial taxes.

No person shall vote in right of any freehold, granted to him fraudulently, to qualify him to vote, and every person who shall prepare to execute such conveyance, or shall give his vote under it, shall forfeit 40*l.*

No person shall vote for a knight of the shire, without having been in the actual possession of the estate for which he votes, or in the receipt of the rents or profits thereof to his own use, above twelve calendar months; unless it come to him by descent, marriage, marriage-settlement, devise, or promotion to a benefice or office.

No person convicted of perjury, shall be capable of voting at an election.

No person shall vote in respect of an annuity of rent-charge, unless registered with the clerk of the peace twelve calendar months before. Such annuity or rent-charge issuing out of a freehold estate.

No person shall vote for a knight of a shire, in respect of any messuages, lands, or tenements, which have not been charged to the land-tax, six calendar months before.

No person shall vote for any estate holden by copy of court roll.

In mortgaged, or trust-estates, the mortgager *cestuy, que trust*, shall vote, and not the trustee or mortgagee, unless they be in actual possession.

All conveyance to multiply voices, or to split votes, shall be void; and no more than one voice shall be admitted for one and the same house and tenement.

The right of election in boroughs is various, depending entirely on the several charters, customs, and constitutions of the respective places; but by 2 G. 2. c. 24. this right of voting, for the future, shall be allowed according to the last determination of the house of commons concerning it.

And no person, claiming to vote in right of his being a freeman of a corporation (other than such as claim by birth, marriage, or servitude), shall be allowed, unless he have been admitted to his freedom twelve calendar months before.

*Of election.* As it is essential to the very being of parliaments that

election should be absolutely free, all undue influence whatever upon the electors, is illegal, and strongly prohibited. As soon, therefore, as the time and place of election within counties or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the pole be ended; except in the liberty of Westminster, or other residence of the royal family, in respect of his majesty's guards, and in fortified places.

By the 7 and 8 *W. c. 4.* to prevent bribery and corruption, no candidate, after teste of the writ of summons, or after a place becomes vacant in parliament time, shall, by himself, or by any other ways or means on his behalf, or at his charge, before his election, directly, or indirectly, give, or promise to give, to any elector any money, meat, drink, provision, present, reward, or entertainment, to or for any such elector in particular; or to any county, city, town, borough, port, or place in general, in order to his being elected, on pain of being incapacitated.

To guard still more against gross and flagrant acts of bribery, it is enacted by 2 *G. 2. c. 24.* explained and enlarged by 9 *G. 2. c. 38.* and 16 *G. 3. c. 11.* that if any money, gift, office, employment or reward, be given, or promised to be given, to any voter, at any time, in order to influence him to give or withhold his vote, as well he that takes, as he that offers such a bribe, forfeits 500*l.* and is for ever disabled from voting and holding any office in any corporation; unless before conviction, he will discover some other offender of the same kind, and then he is indemnified for his own offence.

If the election shall not be determined upon view, with the consent of the freeholders there present, but a poll shall be demanded, the same shall commence on the day on which such demand is made, or on the next day at farthest (if it be not Sunday, and then on the day after), and shall be proceeded in from day to day (Sunday excepted) until it be finished, and shall not continue more than fifteen days (Sundays excepted); and the poll shall be kept open seven hours at least each day, between eight in the morning and eight in the evening. The sheriff shall allow a cheque-book for every poll-book for each candidate, to be kept by their inspectors at the place of taking the poll.

By 34 *G. 3. c. 73.* in order to expedite the business at elections, the returning officers are enabled, on request of the candidates, to appoint persons to administer to voters, the oaths of allegiance; supremacy, the declaration of fidelity, the oath of abjuration, and the declaration of affirmation of the effect thereof, previously to their coming to vote; and to grant the voters certificates of their having taken the said oath; without which certificates, they shall not be permitted to vote, if they are required to take the oaths.

And every freeholder, before he shall be permitted to poll for a knight of the shire, shall, if required by a candidate, or any elector, make oath of his qualification to vote; in which case the sheriff and clerks shall enter the place of his freehold, and the place of his



abode, as he shall disclose the same at the time of giving his vote, and shall enter *jurat* against the name of every such voter who shall have taken the oath.

And by 42 G. 3. c. 62, when a poll shall be demanded at any election for any place in England, the returning officer shall appoint two or more persons to administer all the oaths required by law, which person shall be sworn truly to administer the same.

*Of the return.* After the election, the names of the persons chosen shall be written in an indenture, under the seals of the electors, and tacked to a writ.

The election being closed, the returning officer in boroughs, returns his precept to the sheriff, with the persons elected by the majority. And the sheriff returns the whole, together with the writ for the county, and the names of the knights elected thereupon, to the clerk of the crown in chancery, before the day of meeting if it be a new parliament; or within fourteen days after the election, if it be an occasional vacancy; and this under the penalty of 500*l.* If the sheriff do not return such knights only as are duly elected, he forfeits by stat. H. 6. 100*l.* and the returning officer of a borough, for a like false return, 40*l.* and by the late statutes they are liable to action at the suit of the party duly elected, and to pay double damages, and the like remedy shall be against an officer making a double return.

If two or more sets of electors make each a return of a different member (which is called a double election), that return only, which the returning officer to whom the sheriff's precept was directed, has signed and sealed, is good; and the members by him returned shall sit, until displaced on petition.

On petition to the house of commons, complaining of an undue election, forty-nine members shall be chosen by ballot, out of whom each party shall alternately strike out one, till they are reduced to thirteen, who, together with two more, of whom each party shall nominate one, shall be a select committee for determining such controverted election, 10 and 11 G. 3. c. 16 and 42. See PARLIAMENT.

By 42 G. 3. c. 84. where two or more petitions are to be taken into consideration on the same day, all the parties may be ordered to attend, and after the list of forty-nine members is balloted to form the first committee, the house shall immediately proceed to form successive committees as may be requisite, which shall accordingly be severally appointed. But 200 members must be present on forming such successive committees; and the names of members excused, for reasons applying specially to one petition, may be withdrawn. Names of members intended for, and consenting to be nominees, shall be 'set aside. Lists may be formed of one, or of successive committees, as far as the house is enabled by the numbers present. Parties may withdraw, and reduce lists between two ballots: and any committee being sworn may leave the house. But when there are more than two parties, the committees shall not choose nominees under 11 G. 3. c. 42. till all the other

committees ballotted for are sworn, and then in their turn. Committees shall be attended by a short-hand writer. This act was originally to be in force for two years only: but it was revived, and is now made perpetual by 47 G. 3. sess. 1. c. 1. which statute further enacts that the adding of two members, or one member, to any committee of thirteen, appointed to try any petition on controverted elections, shall not take place until all the other select committees, to be ballotted for on that day, shall have been sworn; and the first committee ballotted shall have the preference in such choice.

ELEGIT is a writ of execution, either upon a judgment upon debt on damages, or upon a forfeiture of the recognizance taken in the king's court.

By the common law, a man could only have satisfaction of goods, chattels, and the present profits of lands, by the writs of *feri facias* or *levari facias*: but not the possession of the lands themselves; so that if the defendant alienated his lands, the plaintiff was ousted of his remedy.

The statute 13 Ed. 1. c. 18. therefore granted this writ, which is called an *elegit*, because it is in the election of the plaintiff, whether he will sue out this writ or one of the former.

ELOPEMENT is, when a married woman, of her own accord, departs from her husband, and dwells with an adulterer; for which without voluntary reconciliation to the husband, she shall lose her dower by the statute of Westminster 2, c. 34.

If a wife willingly leave her husband, and go away and continue with her adulterer, she shall be barred for ever of action to demand her dower that she ought to have of her husband's lands, if she be convicted thereof; except that her husband willingly and without coercion of the church, reconcile her, and suffer her to dwell with him, in which case she shall be restored to her action.

EMBEZZLEMENT, by stat. 39 G. 3. c. 85. for protecting masters against embezzlements by their clerks and servants; servants or clerks, or persons employed for the purpose, or in the capacity of servants or clerks, who shall, by virtue of such employment, receive or take into their possession, any money, goods, bond, bill, note, banker's draft, or other valuable security or effects, for, or in the name, or on the account of their master or employer, or who shall fraudulently embezzle, secrete, or make away with the same, or any part thereof; every such offender shall be deemed to have feloniously stolen the same from his master or employer, for whose use, or on whose account the same was delivered to, or taken into the possession of such servant, clerk, or other person so employed, although such money, goods, bond, bill, note, banker's draft, or other valuable security, was or were no otherwise received into the possession of his or their servants, clerk, or other person so employed; and every such offender, his adviser, procurer, aider, or abettor, being thereof lawfully convicted or attainted, shall be liable to be transported to such part, beyond the seas, as his majesty, by and with the advice of his privy council, shall appoint, for any



term not exceeding fourteen years, in the discretion of the court before whom such offender shall be convicted or adjudged.

**EMBRACERY** is an attempt to corrupt or influence a jury, or any way incline them to be more favourable to the one side than the other, by money, promises, letters, threats, or persuasions; whether the juror on whom such attempt is made, give verdict or not, or whether the verdict given be true or false.

The punishment of an embracer or embraceor, is by fine and imprisonment; and for the juror so embraced, if it be by taking money, the punishment is (by divers statutes) perpetual infamy, imprisonment for a year, and forfeiture of tenfold the value.

**EQUITY** is a construction made by the judges, that cases out of the letter of a statute, yet being within the same mischief or cause of making the same, shall be within the same remedy that the statute provideth. And the reason hereof is, that the law-maker could not possibly set down all cases in express terms: thus though it may be unlawful to kill a man, yet it is not unlawful for one to kill another assaulting him, in order to preserve his own life.

**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 mortgager either to pay the money, or be foreclosed of equity, which is done by proceedings in the court of chancery.

**ERROR**, signifies an error in pleading, or in the process; and the writ which is brought for remedy thereof, is called a writ of error.

A writ of error, is a commission to judges of a superior court, by which they are authorized to examine the record, upon which a judgment was given in an inferior court, and on such examination, to affirm or reserve the same according to law.

If there be any error in the record, any person damnified by it, may bring writ of error to reverse it; whether he be party or not. And where there are several defendants, if one of them release, on his being summoned and severed, the others may reverse the judgment. He that brings writ of error to reverse a judgment, in all cases after verdict, in actions of debt, by confession, &c. Actions of debt on bond, for payment of money, must put in good bail, to prosecute his writ of error, and pay the debt and damages, if judgment be affirmed. If bail be not put in the writ of error is no *supersedeas* to the execution; but the writ of error 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; if the plaintiff doth not, execution is ordered upon the judgment, with a *non obstante* to the writ of error, &c.

The defendant after judgment, bringing error to reverse it, is in the time appointed by the rule, to certify the record into *B. R.* or the court will grant a *nolle prosequi* on the writ of error. When writ of error is brought, the party must cause the roll where the judgment is entered to be marked with the word *error* in the

margin, whereby the other party may take notice of it; and this marking of the roll (on giving notice) is in effect a *supersedeas* to hinder execution upon the judgment. But a *supersedeas* is to be made out, allowed with the sheriff of the county. The plaintiff's attorney is not bound to search the record, whether writ of error be brought; but may take out execution upon the judgment, if no *supersedeas* be taken forth; or he have no notice of the writ of error.

The chief justice only, or the eldest judge, ought to allow a writ of error. The assigning of general errors, on writ of error to reverse a judgment, is to say generally, 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. Errors of judgment are to be assigned upon the record, to appear to the court. Judgment cannot be reversed in part, and stand good for other part; or be reversed as to one party, and stand good against the rest. But if there be error in awarding execution, the execution only, and not the judgment shall be reversed. That shall not be assigned for error, which might have been pleaded to the action. The court will not let the plaintiff in error, quash his own writ of error; but the court may give leave to discontinue it.

**ESCAPE.** An escape is, where one who is arrested gains his liberty before he is delivered by course of law.

Escapes are either in civil or criminal cases; and in both respects escapes may be distinguished into voluntary and negligent; voluntary, where it is with the consent of the keeper; negligent, where it is for want of due care in him.

*In civil cases:* after the prisoner hath been suffered voluntarily to escape, the sheriff can never after retake him, but must answer for the debt; but the plaintiff may retake him at any time. In the case of a negligent escape, the sheriff upon fresh pursuit may retake the prisoner; and the sheriff shall be excused, if he hath him again before any action brought against himself for the escape.

When a defendant is once in custody in execution, upon a *capias ad satisfaciendum*, he is to be kept in close and safe custody; and if he be afterwards seen at large, it is an escape; and the plaintiff may have an action thereupon for his whole debt: for though upon arrests, and what is called *mesne process*, being such as intervenes between the commencement and end of a suit, the sheriff, till the statute 8 and 9 *W. c. 27.* might have indulged the defendant as he pleased, so as he produced him in court to answer the plaintiff at the return of the writ; yet, upon a taking in execution, he could never give any indulgence; for, in that case, confinement is the whole of the debtor's punishment, and of the satisfaction made to the creditor.

A rescue of a prisoner in execution, either in going to gaol, or in gaol, or a breach of prison, will not excuse the sheriff from being guilty of and answering for the escape; for he ought to have sufficient force to keep him, seeing he may command the power of the county.



*In criminal cases* : an escape of a person arrested, by eluding the vigilance of his keeper before he is put in hold, is an offence against public justice, and the party himself is punishable by fine and imprisonment : but the officer permitting such escape, either by negligence or connivance, is much more culpable than the prisoner, who has the natural desire of liberty to plead in his behalf. Officers therefore, who after arrest, negligently permit a felon to escape, are also punishable by fine ; but voluntarily escapes amount to the same kind of offence, and are punishable in the same degree, as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass ; and this whether he was actually committed to gaol, or only under a bare arrest. But the officer cannot be thus punished, till the original delinquent is actually found guilty, or convicted by verdict, confession, or outlawry ; otherwise, it might happen that the officer should be punished for treason or felony, and the party escaping turn out to be an innocent man. But before the conviction of the principal party, the officer thus neglecting his duty, may be fined and imprisoned for a misdemeanor.

If any person shall convey or cause to be conveyed into any gaol, any disguise, instrument, or arms, proper to facilitate the escape of prisoners, attainted or convicted of treason or felony, although no escape or attempt to escape be made ; such persons so offending, and convicted, shall be deemed guilty of felony, and be transported for seven years.

ESCHEAT, in our law, denotes an obstruction of the course of descent, and a consequent determination of the tenure, by some unforeseen contingency ; in which case, the land naturally results back, by a kind of reversion, to the original grantor or lord of the fee.

Escheat happens either for want of heirs of the person last seized, or by his attainder for a crime by him committed ; in which latter case, the blood is tainted, stained, or corrupted, and the inheritable quality of it is thereby extinguished.

For want of heirs is where the tenant dies without any relations on the part of any of his ancestors, or where he dies without any relations of those ancestors paternal or maternal, from whom his estate descended ; or where he dies without any relation of the whole blood. Bastards are also incapable of inheritance ; and therefore if there be no other claimant than such illegitimate children, the land shall escheat to the lord ; and, as bastards cannot be heirs to themselves, so neither can they have any heirs but those of their own bodies, and therefore if a bastard purchase lands, and die seized thereof without issue and intestate, the land shall escheat to the lord of the fee. Aliens also, that is persons born out of the king's allegiance, are incapable of taking by descent, and unless naturalized, are also incapable of taking by purchase ; and therefore, if there be no natural born subjects to claim, such lands shall in like manner escheat.

By attainder for treason or other felony, the blood of the person

attainted is corrupted and stained, and the original donation of the feud is thereby determined, it being always granted to the vassal on the implied condition of his well demeaning himself. In consequence of which corruption and extinction of hereditary blood, the land of all felons would immediately revert to the lord, but that the superior law of forfeiture intervenes, and intercepts it in its passage; in case of treason, for ever; in case of other felony, for only a year and a day; after which time it goes to the lord, in a regular course of escheat.

**ESSOIN**, is where an action is brought, and the plaintiff, or defendant cannot appear at the day in court; then he shall be *essoined*, to save his default.

The *essoin day* is regularly the first day of the term: and *essoin* is a kind of imparlance, *licentia interloquendi*, or a craving of longer time, that lies in real, mixt, and personal actions. *Essoins* are entered on the *essoin-roll* of the court; and in *C. B.* the *essoin-roll*, is a record of the court.

In writs of assize, &c. after the tenant hath once appeared, he shall not be *essoined*; the inquest is to be taken by default. *Essoin ultra mare*, shall not be allowed, if the tenant be within the four seas. There is no *essoin* for an appellant. Nor does *essoin* lie, where any judgment is given; the party is distrained by his lands; the sheriff commanded to make him appear; the party seen in court, &c.

There is *essoin de servitio regis*, and of diverse other kinds.

**ESTATE**, signifies such inheritance, freehold, term for years, tenancy by statute merchant, staple, elegit, or the like, as any man hath in lands and tenements. Estates are real, of lands, tenements, &c. or personal, of goods, or chattels; otherwise distinguished into freeholds that descend to the heir, and chattels which go to the executors.

*Of estate in fee-simple*: an estate in fee-simple, is an estate in lands, tenements, lordships, advowsons, commons, estovers, and all hereditaments, to a man and his heirs for ever: also, where a corporation sole or aggregate, are capable of holding in succession, and lands are given to them and their successors, they are said to have a fee-simple.

*Of estate in tail*: an estate is said to be intailed, when it is ascertained what issue shall inherit it.

*What things may be intailed by the statute of entails*. The statute makes use of the word *tenementum*, and therefore the estate to be intailed, may be as well incorporeal as corporeal inheritances, because the word *tenementum*, comprehends the one as well as the other, and consequently, not only lands may be intailed, but all rents, commons, estovers, or other profits arising from lands.

*What words create an estate tail*. When the notion of succession prevailed, it was necessary in feudal donations to use the word heirs, to distinguish such descendible feud from that which was granted only for life; but as to the word body, it was necessary to make use of that in the donation, but it might be expressed by any equi-



valent words, and therefore a gift to a man, and *hæredibus de se*, or *de carne quo sibi contigerit habere*, or *procreavit*, is a good estate tail; for these sufficiently circumscribe the word heirs, to the descendants of the feudatory: and the reason of the difference is, for that inheritances being only derived from the law, and the law requires the word heirs, that comprehends the whole notion of such legal representation: but the limiting the inheritance to the descendants of this or the other body, is only the particular intention of the person that forms the gift, and therefore the law leaves every man to express himself in such manner as may manifest that intention.

*Of tenant in tail changing his estate.* The statute *de bonis*, affecting a perpetuity, restrained the donee in tail either from alienating or charging his estate tail; and by that act the tenant in tail was likewise to leave the land to his heirs, as he received it from the donor; and, upon that statute, the heir in tail might have avoided any alienation or incumbrance of his ancestor; and as the law stood upon that act, so might he in reversion, when the heirs of the donee failed, which were inheritable to the gift. The crown long struggled to break through the perpetuity which was established by this law; and in the reign of *Ed. 4.* we find the pretended recompence given against the vouchee in the common recovery to be allowed an equivalent for the estate tail; and because this recompence was to go in succession as the land in tail should have done, therefore they allowed the recovery to bar the reversion as well as the issue in tail, because he in the reversion was to have the recompence in failure of the issue of the donee.

**ESTRAYS AND WAIFS.** Estrays are where any horses, sheep, hogs, beasts, or swans, or any beast that is not wild, come into a lordship, and are not owned by any man.

The reason of estray is, because when no person can make title to the thing, the law gives it to the king, if the owner do not claim it within a year and a day.

Waifs are goods which are stolen, and waved, or left by the felon, on his being pursued, for fear of being apprehended; and forfeited to the king or lord of the manor; and though waifs are generally spoken of things stolen, yet if a man be pursued with hue and cry as a felon, and he flies and leaves his own goods, these will be forfeited as goods stolen: but they are properly the fugitive's goods, and not forfeited, till it be found before the corner, or otherwise of record, that he fled for the felony.

Waifs and strays, were anciently the property of the finders, by the law of nature; and afterwards the property of the king by the law of nations.

Waifs and strays, not claimed within the year and day, are the lord's. For where the lord has a beast a year and a day, and it has been cried in the church and markets, the property is changed.

But it must be a year and a day from the time of proclamation, and not from the time of seizure; for it does not become an estray till after the first proclamation.

The king's cattle cannot be estrays or forfeited. 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 a horse.

EVES-DROPPERS, or EAVES-DROPPERS, are such as stand under walls and windows, by night or day, to hear news, and to carry them to others, to cause strife and contention among neighbours. These are evil members in the commonwealth, and therefore by st. Westminster 1. c. 33. are to be punished: and this misdemeanor is presentable and punishable in the court leet.

EVIDENCE, is the testimony adduced before a court or magistrate of competent jurisdiction, by which such court or magistrate is enabled to ascertain any fact which may be litigated between the parties.

This may be of two kinds, viz. written or verbal, the former by deeds, bonds, or other written documents, the latter by witnesses examined *viva voce*.

Evidence may be further divided into absolute and presumptive; the former is direct, in positive or absolute affirmance or denial of any particular fact; the latter collateral, and from the conduct of the parties, affords an inference that such a particular fact, did or did not occur.

The party making any affirmative allegation which is denied by his adversary, is in general required to prove it, unless indeed a man be charged with not doing an act, which by law he is required to do; for here a different rule must necessarily prevail, and the rule is, that the evidence must be applied to the particular fact in dispute; and therefore no evidence not relating to the issue, or in some manner connected with it, can be received; nor can the character of either party, unless put in issue by the very proceeding itself, be called in question; for the cause is to be decided on its own circumstances, and not to be prejudiced by any matter foreign to it.

It is an established principle, that the best evidence the nature of the case will admit shall be produced; for if it appear, that better evidence might have been brought forward, the very circumstance of its being withheld furnishes a suspicion that it would have prejudiced the party in whose power it is, had he produced it. Thus if a written contract be in the custody of the party, no verbal testimony can be received of its contents.

The law never gives credit to the bare assertion of any one, however high his rank or pure his morals; but requires (except in particular cases with respect to quakers) the sanction of an oath, the personal attendance of the party in court that he may be examined and cross-examined by the different parties; and therefore in cases depending on parole or verbal evidence, the testimony of persons who are themselves conversant with the facts they relate, must be produced, the law paying no regard, except under very special circumstances, to the hearsay evidence. Thus, in some cases, the memorandum in writing made at the time, by a person since deceased, in the ordinary way of his business, and which is corre-



borated by other circumstances, will be admitted as evidence of the fact.

What a party himself has been heard to say, does not fall within the objection. As to hearsay evidence, any thing therefore which the party admits, or which another asserts in his presence, and he does not contradict, is received as evidence against him; but what is said by his wife, or any other member of his family in his absence, will be rejected.

But a distinction must be made between admission, and an offer of compromise, after a dispute has arisen. An offer to pay a sum of money in order to get rid of an action, is not received in evidence of a debt, because such offers are made to stop litigation, without regard to the question whether any thing, or what is due.

Admission of particular articles before arbitration are also good evidence, for they are not made with a view to compromise, but the parties are contesting their rights as much as they could do on a trial.

In cases where positive and direct evidence is not to be looked for, the proof of circumstance and fact consistent with the claim of one party, and inconsistent with that of the other, is deemed sufficient to enable the jury, under the direction of the court of justice, to presume the particular fact, which is the subject of controversy; for the mind comparing the circumstances of the particular case, judges therefrom as to the probability of the story, and for want of better evidence, draws a conclusion from that before it.

Written evidence has been divided into two classes, the one that which is public, the other private; and this first has been subdivided into matters of record, and others of an inferior nature.

The memorials of the legislature, such as acts of parliament, and other proceedings of the two houses, where acting in a legislative character; and judgment of the king's superior courts of justice, are denominated records, and are so respected by the law, that no evidence whatsoever can be received in contradiction of them; but these are not permitted to be removed from place to place, to serve a private purpose, and are therefore proved by copies of them, which, in the absence of the original, is the next best evidence.

*Of persons incompetent to give evidence.* All persons who are examined as witnesses, must be fully possessed of their understanding; that is, such an understanding as enables them to retain in memory, the events of which they have been witnesses, and gives them a knowledge of right and wrong.

A conviction of treason or felony, and every species thereof, such as perjury, conspiracy, barratry, &c. prevents a man when convicted of them, from being examined in a court of justice. When a man is convicted of any of the offences before mentioned, and judgment entered up, he is for ever after incompetent to give evidence, unless the stigma be removed, which in case of a conviction of perjury, on the stat. of 5 Eliz. c. 9. can never be by any means short of a reversal of the judgment, for the statute has in this case,

made his incompetency part of his punishment; but if a man be convicted of perjury, or any other offence at the common law, and the king pardons him in particular, or grants a general pardon to all such convicts, this restores him to his credit, and the judgment no longer forms an objection to his testimony; but an actual pardon must be shewn under the great seal, the warrant for it under the king's sign manual not being sufficient. To found this objection to the testimony of a witness, the party who intends to make it, should be prepared with a copy of the judgment regularly entered, upon the verdict of conviction, for until such judgment be entered, the witness is not deprived of his legal privileges.

Persons may also be incompetent witnesses, by reason of their interest in the cause. The rule which has the most extensive operation in the exclusion of witnesses, and which has been found most difficult in its application, is that which prevents persons interested in the event of a suit, unless in a few excepted cases of evident necessity, from being witness in it. Of late years the courts have endeavoured, as far as possible consistent with authorities, to let the objection go to the credit rather than to the competency of the witness; and the general rule now established is, that no objection can be made to a witness on this ground, unless he be distinctly interested, that is, unless he may be immediately benefited or injured by the event of the suit, or unless the verdict to be obtained by his evidence, or given against it, will be evidence for or against him in another action, in which he may afterwards be a party; any smaller degree of interest, as the possibility that he may be liable to an action in a certain event, or that standing in a similar situation with the party by whom he is called, the decision in that cause, may by possibility influence the minds of a jury in his own, or the like, though it furnish a strong argument against his credibility, does not destroy his competency.

On the question, how far persons who have been defrauded of securities, or injured by a perjury or other crime, can be witnesses in prosecuting for those offences, the event of which might possibly exonerate them from the obligation they are charged to have entered into, or restore to them the money which they have been obliged to pay, the general principle now established is this: the question in a criminal prosecution or personal act being the same with that in a civil cause, in which the witnesses are interested, goes generally to the credit, unless the judgment in the prosecution where they are witnesses, can be given in evidence in this cause wherein they are interested. But though this is the general rule, an exception to it seems to be established in the case of forgery; for many cases have been decided, that a person whose hand writing has been forged to an instrument, whereby if good he would be charged with a sum of money, or one who has paid money in consequence of such forgery, cannot be a witness on the indictment. In cases where the party injured cannot by possibility derive any benefit from the verdict in the prosecution, as in indictments for assault, and the like personal injury, his competence



has never been doubted. It is a general rule that a party cannot be examined as a witness, for he is in the highest degree interested in the event of it; but where a man is not in point of fact interested, but only a nominal party, as where members of a charitable institution are defendants in their corporal character, there is no objection to an individual member being examined as a witness for the corporation, for in this case he is giving evidence for the public body only, and not for himself as an individual.

But instances sometimes occur, in which persons substantially interested, and even parties in a cause, are permitted to be examined from the necessity of the case, and absolute impossibility of procuring other evidence.

In an action on the statute of Winton, the party robbed is a witness; and on the same principle of necessity it has been holden, that persons who become interested in the common course of business, and who alone can have knowledge of the fact, may be called as witnesses to prove it, as in the case of a servant who has been paid money, or a porter who in the way of his business, delivers out or receives parcels, though the evidence whereby he charges another with the money or goods, exonerates himself from his liability to account to his master for them; for if this interest were to exclude testimony, there would never be evidence of any such facts.

As no one can be witness for himself, it follows of course husband and wife, whose interest the law has united, are incompetent to give evidence on behalf of each other, or of any person whose interest is the same, and the law, considering the policy of marriage, also prevents them giving evidence against each other, for it would be hard that a wife, who could not be a witness for her husband, should be a witness against him; such a rule would occasion implacable divisions and quarrels between them. In like manner, as the law respects the private peace of men, it considers the confidential communications made for the purpose of defence in a court of justice. By permitting a party to intrust the cause in the hands of a third person, it establishes a confidence and trust between the client and person so employed.

Barristers and attorneys, to whom facts are related professionally during a cause, or in contemplation of it, are neither obliged nor permitted to disclose the facts so divulged during the pendency of that cause, or at any future time; and if a foreigner, in communication with his attorney, have recourse to an interpreter, he is equally bound to secrecy.

Where a man has by putting his name to an instrument given a sanction to it, he has been held by some judges to be precluded, or stopped from giving any evidence in a court of justice which may invalidate it; as in the case of a party to a bill of exchange or promissory note, who has been said not to be an admissible witness to destroy it, on the grounds that it would enable two persons to combine together; and by holding out a false credit to the world, de-

ceive and impose on mankind. On this principle it was held, that an indorser could not be a witness to prove notes usurious, in an action or a bond founded on such notes, though the notes themselves had been delivered up, on the execution of the bond. At one time this seems to have been understood as a general principle applicable to all instruments; but in a case where an underwriter of a policy of insurance, was called to prove the instrument void as against another underwriter, and objected to on this ground, the court declared, that it extended only to the negotiable instruments, and he was admitted to give evidence destructive of the policy.

When a witness is not liable to any legal objection, he is first examined by the counsel for the party on whose behalf he comes to give evidence, as to his knowledge of the fact he is to prove. This examination in cases of any intricacy, is a duty of no small importance in the counsel; for as on the one hand, the law will not allow him to put what they call leading questions, viz. to form them in such a way as would instruct the witness in the answers he is to give; so on the other, he should be careful that he make himself sufficiently understood by the witness, who may otherwise omit some material circumstance of the case.

The party examined must depose those facts only of which he has an immediate knowledge and recollection; he may refresh his memory with a copy taken by himself from a day-book; and if he can then speak positively as to his recollection; it is sufficient; but if he have no recollection further than finding the entry in his book, the book itself must be produced. Where the defendant had signed acknowledgments of having received money, in a day-book of the plaintiff, and the plaintiff's clerk afterwards read over the items to him, and he acknowledged them all right, it was held, that the witness might refresh his memory by referring to the books, although there was no stop to the items on which the receipt was written, for this was only proving a verbal acknowledgment, and not a written receipt.

Lord Ellenborough, upon the authority of Lord Chief Justice Tully, has recently laid down a very important doctrine, viz. that no witness shall be bound to answer any question which tends to degrade himself, or shew him to be infamous.

It is, however, enacted by the statute 46 G. 3. c. 37. that a witness cannot refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture, by reason only that the answer to such a question may establish, or tend to establish, that he owes a debt or is subject to a civil suit.

**EXCHANGE.** An exchange is a mutual grant of equal interests, the one in consideration of the other.

An exchange may be made of things that lie either in grant or in livery. But no livery of seising, even in exchanges of freehold, is necessary to perfect the conveyance: for each party stands in the place of the other, and occupies his right, and each of them hath



already had corporal possession of his own land. But entry must be made on both sides; for if either party die before the entry, exchange is void, for want of sufficient notoriety.

In exchange, the estates of both parties should be equal; that is if the one hath a fee simple in the one land, the other should have like estate in the other land: and if the one have fee tail in the one land, the other ought to have the like estate in the other land: and so of other estates. But it is not material in the exchange, that the lands be of equal value, but only that they be equal in kind and manner of the estate given and taken.

Exchange among merchants, is a commerce of money, or a bartering or exchanging the money of one city or country for that of another: money, in this sense, is either real or imaginary; real, any real specie current in any country at a certain price, at which it passes by the authority of the state, and of its own intrinsic value; by imaginary money, is understood all the denominations made use of to express any sum of money, which is not the just value of any real specie.

Whatever may be the denomination or value of the coin circulating in any country, there is always a rate of exchange, founded upon its intrinsic value, which is called par, between every two countries; but in proportion as the demand may be greater or smaller between one country and another, bills or money become plenty or scarce. When in the market or upon 'Change, which is the money market, the bills drawn are in greater quantities than the remittances, then they sink in value, and the rate of exchange is said to be against the place. When on the contrary there are more bills wanted than can easily be obtained, the rate of exchange is said to be favourable, and is above par.

Re-exchange, is when the holder of a bill finds it not paid by the acceptor, then it becomes necessary to take those steps which the circumstances of the case, the law of the land, and the usage of merchants authorize.

The holder of a bill, upon payment being refused, may lawfully take up from a banker, in the place where it is payable, the amount of the bill, and give in return a bill payable upon sight, upon the party from whom the first bill was received, or upon any other person. If he be obliged, in consequence of the course of exchange, and the balance being in favour of cash, to pay a price for the money which he receives, that price is the re-exchange, which must be compensated by the preceding parties to the bill.

**EXCHEQUER.** This, which is a court of law and equity, is a very ancient court of record, established by William the Conqueror as a part of the *aula regis*, though regulated and reduced to its present state by *Ed. 1.* and intended principally to order the revenues of the crown, and to recover the king's debt and duties.

The court consists of two divisions, viz. the receipt of the exchequer, which manages the royal revenue; and the judicial, which is again subdivided into a court of equity, and a court of common law.

The court of equity is held in the exchequer, before the lord treasurer, the chancellor of the exchequer, the chief baron, and three *puisne* barons. The primary and original business of this court was to call the king's debtors to account, by bill filed by the attorney-general, and to recover any lands, tenements, or hereditaments, goods, chattels, or other profits or benefits, belonging to the crown.

This court, which was established merely for the benefit of the king's accomptant, is thrown open; and now, by suggestion of privilege, any person may be admitted to sue here, as well as the king's accomptant.

An appeal from the equity side of this court lies immediately to the house of peers; but from the common law side, pursuant to 31 *Ed. 3. c. 12.* a writ of error must first be brought into the court of exchequer chamber, from whence, in the *dernier resort*, there lies an appeal to the house of lords.

**EXCHEQUER CHAMBER.** This court has no original jurisdiction, but is merely a court of appeal, to correct the errors of other jurisdictions; and consists of the lord chancellor, the lord treasurer, with the justices of the king's bench and common pleas. In imitation of this, a second court of exchequer chamber was erected by 27 *Eliz. c. 1.* consisting of the justices of the common pleas, and the barons of the exchequer; before whom writs of error may be brought, to reverse judgments in certain suits commenced originally in the court of king's bench. Into the exchequer chamber, are sometimes adjourned from the other courts, such causes, as the judges upon argument find to be of great weight and difficulty, before any judgment is given upon them in the court.

**EXCISE,** is an inland imposition, sometimes paid upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage previous to the consumption.

For more easily levying the revenue of the excise, the kingdom of England and Wales, is divided into about fifty collections, some of which are called by the names of particular counties, others by the names of great towns; where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties, every such collection is subdivided into several districts, within which there is a supervisor; and each district is again subdivided into out-rides and foot-walks, within each of which there is a gauger or surveying officer.

The commissioners or sub-commissioners in their respective circuits and divisions, shall constitute, under their hands and seals, as many gaugers as they shall find needful.

**Arrears of Duties.** By several acts of parliament, all articles in the possession of persons subject to the excise laws, together with all the materials and utensils of whatsoever description, are made liable for the arrears of duties, whether these be single or double duties; and if a trader, being in arrears for the single duties, become a bankrupt, and is convicted after the assignment of his effects, the double duties are a lien upon the excisable commo-



dities, utensils, and materials in the hands of his assignees, and the commissioners or magistrates may authorize the penalty to be levied upon all such commodities, and all the materials, preparations, utensils, and vessels for making thereof, in the custody of the bankrupt, or any person or persons in trust for him.

Bonds, for the exportation of exciseable commodities, are to be taken by officers of excise, and they are to be given generally upon all exciseable articles, at the place where exported.

Forgery of any stamps, licenses, certificates, permits, or any other excise documents, is by various statutes made a capital felony.

Licenses. In all cases where licenses are required, the license will only sanction the business carried on in that particular place for which such license was granted; but when the business is carried on by partners, one license will be sufficient to cover the firm.

*Officers of excise.* The officers of excise are to be appointed, and may be dismissed, replaced, or altered, by the commissioners under their hands and seals; and 1 *W. and M. c. 24. s. 15.* if it be proved by two witnesses, that any officer has demanded or taken any money, or other reward whatever, except of the king, such offender shall forfeit his office.

By stat. 12 *Car. 2. c. 24. s. 47, 48.* no person shall be capable of intermeddling with any office relative to the excise, until he shall, before two justices of the peace in the county where he resides, or before a baron of the exchequer, take the oaths of allegiance and supremacy, together with an oath of office, which is to be certified to, and recorded by the next quarter sessions. He must further receive the sacrament according to the usage of the church of England, and deliver a certificate thereof in the court where he takes the said oaths.

No commissioner or other officer of excise can vote at elections, or meddle therein, nor can any commissioner be a member of parliament, under heavy penalties.

By several statutes, no process can be sued out against any officer of excise, for any act done in the execution of his office, until one month after notice given, specifying the cause of action, and the name and abode of the person who is to begin, and the attorney who is to conduct the action; and within one month after such notice, the officer may tender amends, and plead such tender in bar; and having tendered insufficient or no amends, he may, with leave of the court, before issue joined, pay money into court.

Officers of excise are empowered to search, at all times of the day, entered warehouses, or places for tea, coffee, &c. But private houses can only be searched upon oath of the suspicion before a commissioner or justice of peace, who can by their warrant authorize a search.

*Permit.* Persons dealing in exciseable commodities are entitled to permits for removing the same to different places in certain quantities, and under certain regulations. These permits are written upon a peculiar species of paper, manufactured expressly

for the purpose; and by 23 G. 3. c. 70. s. 11. no permit paper is to be delivered out before it shall be filled up agreeable to the request note of a trader; and officers knowingly granting any false permit, making false entries in the counter part thereof, or receiving any commodities into stock with a false and forged permit, are to be transported for seven years.

*Samples.* Officers of excise are by various acts empowered to take samples of exciseable commodities, paying the prices therein regulated for the same.

*Seizures.* When an officer makes a seizure of any spirits or other articles, he must lay his hand on the casks, vessels, &c. so seized, and declare that he seizes such spirits, &c. and the casks or vessels containing the same, for the use of his majesty and of himself; but if the officer happen to be alone when he makes such seizure, he must afterwards, in the presence of witnesses, again lay his hand on such cask, vessel, &c. and repeat the former declaration of seizure.

All informations on seizures, must be laid in the names of the officers making the same.

By 41 G. 3. c. 96. commissioners of excise are empowered to make restitution of exciseable goods.

*Scales and Weights.* By various acts of parliament traders, subject to the excise laws, are to keep just and sufficient scales and weights, under penalty of 100*l.* for every such offence, and the scales and weights may be seized by the officer.

Traders, manufacturers, and dealers liable to the excise duties, are to assist the officers in weighing stock; and forcibly obstructing, or using any act of contrivance to prevent or impede the officer from taking a true account, incurs a penalty of 100*l.*

Such are the more general regulations relative to the excise. Various acts of parliament have been passed from time to time, imposing excise duties and prescribing regulations accordingly: but these, as being too numerous and too complex to be introduced into this compendious dictionary, are on that account omitted.

**EXECUTION**, is a judicial writ, grounded on the judgment of the court from which it issues; and is supposed to be granted by the court at the request of the party at whose suit it is issued, to give him satisfaction on the judgment which he hath obtained: and therefore an execution cannot be sued out in one court, upon a judgment obtained in another.

Executions in actions where money is recovered, as a debt or damages, are of five sorts: 1. against the body of the defendant; 2. or against his goods or chattels; 3. against his goods and the profits of his lands; 4. against the goods and the possession of his land; 5. against all three, his body, lands, and goods.

**EXECUTOR.** See **ADMINISTRATOR.**

**EXTINGUISHMENT.** Wherever a right, title, or interest is destroyed, or taken away by the act of God, operation of law, or act of the party, this is called an extinguishment.

*Of the extinguishment of rents.* If the lessor purchase the tenancy



from his lessee, he cannot have both the rent and the land, nor can the tenant be under any obligation to pay the rent, when the land, which was the consideration thereof, is returned by the lessor into his own hands; and this resumption or purchase of the tenancy, makes, what is properly called, an extinguishment of the rent.

*Of the extinguishment of copyholds.* As to the extinguishment of copyholds, it is laid down as a general rule, that any act of the copyholder, which denotes his intention to hold no longer of his lord, amounting to a determination of his will, is an extinguishment of his copyhold.

*Of the extinguishment of common.* If a commoner release his common in one acre, it is an extinguishment of the whole common.

*Of the extinguishment of debts.* A creditor's accepting a higher security than he had before, is an extinguishment of the first debt; as if a creditor by simple contract accept an obligation, this extinguishes the simple contract debt.

EXTORTION signifies any oppression by colour or pretence of right, and in this respect it is said to be more heinous than robbery itself, as also that it is usually attended with the aggravating sin of perjury.

At common law, extortion is severely punishable at the king's suit, by fine and imprisonment, and by a removal from the office in the execution whereof it was committed. 31 *Eliz. c. 5.* And this statute adds a greater penalty than the common law gave; for hereby the plaintiff shall recover his double damages.

FAIRS AND MARKETS were instituted for the better regulation of trade and commerce, and that merchants and traders may be furnished with such commodities as they want, at a particular mart, without that trouble and loss of time, which must necessarily attend travelling about from place to place; and therefore as this is a matter of universal concern to the commonwealth, so it hath always been held, that no person can claim a fair or market, unless it be by grant from the king, or by prescription, which supposes such grant.

Owners and governors of fairs are to take care that every thing be sold according to just weight and measure, and for that and other purposes may appoint a clerk of the fair or market, who is to mark and allow such weights, and for his duty herein can only take his reasonable and just fees.

Toll is a matter of private benefit to the owner of the fair or market, and not incident to it; therefore if the king grant a fair or market, and grant no toll, the patentee can have none, and such fair or market is counted a free fair or market.

No toll shall be paid for any thing brought to fair or market, before the same is sold, unless it be by custom time out of mind, and upon such sale, and the toll is to be paid by the buyer.

Goods in a fair or market cannot be distrained for rent, for they are brought thither for the good of the public; but if they are driving to market, and by the way are put into a pasture, it is otherwise.

Generally, all sales and contracts of all things vendible in fairs or open markets, shall be good not only between the parties, but also binding on all those that have any right or property therein.

**FALSE IMPRISONMENT**, is where a man is arrested and restrained from his liberty, without cause, contrary to law.

If a man is unlawfully imprisoned, he may bring action of trespass for false imprisonment, and recover damages: or have a habeas corpus, and upon return of the writ, setting forth the cause of the commitment, &c. if it appears to be against law, he shall be discharged; or if it be doubtful, may be bailed.

Action of false imprisonment lies against a bailiff, for arresting a person after the return of the writ is past; it being then without writ. And when one is detained longer than he ought, though he was at first lawfully imprisoned, it is false imprisonment. If a sheriff, or gaoler, detains a prisoner in gaol, after his acquittal, it is unlawful imprisonment, except for fees; not for meat, drink, &c.

Where a person is taken and imprisoned on a process unduly obtained, action of false imprisonment lies by the party imprisoned against him at whose suit he is imprisoned; but not against the officer, who executes it. Though if the court, out of which a process issues, hath no jurisdiction of the matter, the officer will not be excused.

A man under arrest, &c. is said to be in prison. And the law favours liberty, and the freedom of a man from imprisonment.

*False imprisonment.* To constitute the injury of false imprisonment, two points are necessary: the detention of the person, and the unlawfulness of such detention. Every confinement of the person is imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the streets.

By magna charta, no freeman shall be taken and imprisoned, but by the lawful judgment of his equals, or by the law of the land: and by the petition of right, 3 C. 1. no freeman shall be imprisoned or detained without cause shewn, to which he may make answer according to law. And by the 16 C. 1. c. 10. if any person be restrained of his liberty, he may, upon application by his counsel, have a writ of habeas corpus, to bring him before the court of king's bench or common pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice doth appertain.

For false imprisonment, the law hath not only decreed a punishment by fine and imprisonment, as a heinous public crime, but hath also given a private reparation to the party by action at law, wherein he shall recover damages for the loss of his time and liberty.

**FALSE NEWS**, slanderous to the king, or to make discord between the king and nobility, &c. to be punishable by imprisonment.

**FALSE OATH.** If a person take a false oath, he is punishable for it by action on the case if it be not perjury, for which he may



be indicted ; for there is a difference between a false oath and perjury ; for one is judicial, the other is extra-judicial. And the law inflicts greater punishment for a false oath made in a court of justice than elsewhere, because of the preservation of justice. See PERJURY.

FARM. By stat. 21 H. 8. c. 13. no parson or spiritual person may take farms or leases of lands, on pain of forfeiting 10*l.* per month.

But the severity of this statute is now mitigated by the 43 G. 3. c. 84. which exempts them from such fines, on their obtaining the license of the bishop within whose diocese they are. By the same statute they are also permitted to buy and sell corn and cattle, the produce of their farms, or such as are necessary for their cultivation, provided they do not buy or sell in person in any fair, market, or public sale.

FEE. All our land here in England (the crown lands being in the king's own hands, in right of his crown, excepted) is in the nature of *feudum* or *fee* ; for though many have land by descent from their ancestors, and others have clearly purchased land with their money, yet is the land of such a nature, that it cannot come to any, either by descent or purchase, but with the burthen that was laid upon him who had novel fee, or first of all received it as a benefit from his lord to him, and to all such to whom it might descend, or any way be conveyed from him ; so that in truth, no man hath *directum dominium*, the very property or demesne in any land, but only the prince in right of his crown.

FEALTY, signifies in the law, an oath taken by tenants, on admittance to their estates, to be true and faithful to the lord of whom they hold the land.

Fealty is incident to all manner of tenures, except tenancy at will, and frankalmoign. Lessees for life, or years, ought to do fealty to the lessor, for the lands they hold ; and there can be no tenure without some service. But fealty is most commonly used for copyhold estates, held in fee, and for life.

The steward of the lord may take fealty, but not homage ; and it is done to the lord in this manner, viz. the tenant holds his right hand upon the book, and says to the lord, I will be to you true and faithful, and bear to you faith for the lands and tenements which I hold for you ; and I will truly do and perform the customs and services I ought to do to you. So help me God. And then kisses the book.

This oath is in some manors neglected ; but it is generally observed.

FEE SIMPLE, is an estate of inheritance whereby a person is seised of lands, tenements, or hereditaments, to hold him and his heirs for ever, generally, absolutely, and entirely ; without mentioning what heirs, but referring that to his own pleasure, or to the disposition of the law. It is the most perfect tenure of any, when unencumbered ; but although it is the greatest interest which by our own law a subject can possess, yet it may be forfeited for

treason or felony. To constitute an estate in fee, or of inheritance, the word heir is necessary in the grant or donation.

**FEE QUALIFIED**, is such a freehold estate as has a qualification subjoined to it, and which therefore must determine whenever the qualification is at an end.

**FEE CONDITIONAL**. This estate was, at the common law, a fee restrained to some particular heirs exclusive of others; as to the heirs of a man's body, or to the heirs male of his body; in which case it was held, that as soon as the grantee had issue born, the estate was thereby converted into fee simple, at least so far as to enable him to sell it, to forfeit it by treason, or to charge it with incumbrances. But the statute *de donis* having enacted, that such estates so given, to a man, and the heirs of his body, should at all events go to the issue, if there were any, or if none, should revert to the donor, this was by the judges denominated an estate in tail.

**FEE FARM**, is when the lord, upon the creation of the tenancy, reserves to himself and his heirs either the rent for which it was before let to farm, or at least a fourth part of that farm rent.

**FELO DE SE**, a felon of himself, is a person who, being of sound mind, and of the age of discretion, voluntarily kills himself; for if a person be insane at the time, it is no crime. But this ought not to be extended so far as the coroners' juries sometimes carry it, who suppose that the very act of self-murder is an evidence of insanity: as if every man who acts contrary to reason had no reason at all, for the same argument would prove every other criminal *non compos* as well as the self-murderer.

All inquisitions of the offence, being in the nature of indictments, ought particularly and certainly to set forth the circumstances of the fact; as the particular manner of the wound, and that it was mortal, &c. and in conclusion add, that the party in such manner murdered himself.

A *felo de se* forfeits all chattels, real and personal, which he hath in his own right, and also all such chattels real whereof he is possessed, either jointly with his wife, or in her right; and also all bonds, and other personal things in action, belonging solely to himself; and also all personal things in action, and entire chattels in possession, to which he was entitled jointly with another, on any account, except that of merchandize; but it is said that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing at all of what he was possessed of as executor or administrator.

Besides such forfeiture to the crown, there is a further punishment for this offence, viz. an ignominious burial in the highway, when a stake is driven through the body of the suicide.

**FELONY** is a crime committed with a fell, fierce, or bitter mind, and was anciently every capital crime perpetrated with an evil intention. But a bare intention to commit felony, is not felony, but a crime for which the offender is fineable.



Felonies are either by the common law, or statute law: by the common law, such as are against the life of a man, his goods, or habitation, or against public justice: murder, manslaughter, larceny, robbery, burglary, &c. are felonies at common law: piracy, and robbery on the sea, is felony by the civil law: and felonies by statute are very many. Also felonies are of a public or private nature; hurtful to the people in general, or to some particular persons.

If 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; but it is otherwise where the wife steals goods alone. A feme covert cannot steal the goods of her husband; but if she deliver them to an adulterer, and he receives them, it is felony in him. If a shopkeeper deliver goods to a person who pretends to buy them, and he runneth away with them, it is felony. Stealing goods which persons, by contract, are to use, is felony. A guest stealing plate set before him in an inn, &c. it is felony; and persons who have the charge of things, as a butler, who hath the charge of plate; a servant of a chamber, &c. may be guilty of felony. Likewise the least removing of a thing, in common attempts of felony, though it be not carried off. But goods must not be of a base nature, such as dogs, &c. nor *feræ naturæ*, as deer, hares, &c. unless made tame, when it is felony to steal them. Taking away turkeys, geese, poultry, fish in a trunk or pond, &c. is felony.

If a man break a house in the day time, and therein take goods, and remove them from one place to another in the same house, with an intent of theft, it is felony by the common law; the taking being in possession and stealing.

A lodger in an inn rose in the night, and carried linen out of his chamber into another room, with an intent to steal it, and going to the stable for his horse, the servant took him therewith; and it was adjudged felony.

On an indictment against a person for digging up the graves of several persons in the night, and taking away their winding-sheets, and afterwards interring their bodies again, it was resolved, that the property of the sheets remained in the owner, whose they were when made use of to that purpose, and not of the dead person; so the indictment was good, and the offender was found guilty of felony, but had his clergy.

If a tradesman delivers goods to his men to work in his house, and the workmen steal away part of them, it is felony, notwithstanding the delivery to the party, by reason the property is not altered by such delivery, but still remains in the owner.

And an indictment may be brought for stealing the goods of a certain person unknown.

Where a felon steals goods, and hides them, and afterwards flies for the felony, those goods are not forfeited as waifs in law; because waifs are properly those goods which the felon hath about him, and which he leaveth, being closely pursued, that he may

more readily make his escape; but stolen goods which he hides may be taken by the owner wherever he finds them.

If one come to a market, pretending to buy a horse, and the owner giveth him leave to ride the horse, to try his paces, and he rides away, this is felony. So if I deliver goods to a porter to carry to such a place, and he carrieth them to another place, and there openeth and disposeth of them, this is felony. The law is the same if the goods were carried to the place appointed and then embezzled; because when they are brought to that place the contract is determined, and the possession is revested in the owner: and so being taken away afterwards, it is felony.

By statute 10 and 11 *W. 3. c. 3.* if any person steal out of a shop, warehouse, &c. any goods privately or feloniously, of the value of *5s.* or more, though such shop, &c. be not broke open, &c. or that shall assist in committing such offences, &c. shall not have the benefit of clergy.

By the 4 *Geo. 1. c. 11.* he who takes money, or any reward, to help another to his goods which were stolen, shall be guilty of felony himself, and suffer as if he had stolen the goods, unless he apprehends the felon who did.

By stat. 6 *Geo. 1. c. 23.* he who shall discover, apprehend, and prosecute to conviction of felony, without clergy, any person for taking money, or other reward, to help another to his goods which are stole, (such offender not having apprehended the felon who stole them, and brought him to a trial, and given evidence against him,) shall be entitled to a reward of *40l.* for every offender so convicted; and shall have the like certificate and like payment made without fee, as any person for apprehending, prosecuting, and convicting a highwayman.

By stat. 9 *Geo. 1. c. 22.* it is felony, without benefit of clergy, for any person, after 1st June, 1723, to appear armed, and having his face blacked or disguised.

Concealing, abetting, or succouring an offender after the expiration of the time he is to surrender himself, knowing him to be charged on oath, and that he hath been required by such order to surrender himself, is felony without benefit of clergy.

Offender taken before the time expired in which he is by the said order to surrender himself, shall be tried by due course of common law.

The inhabitants of the hundred are chargeable to make satisfaction for any damages sustained by any person, and done by any offender against the aforesaid act 9 *Geo. 1. c. 22* the sum to be recovered not exceeding *200l.* And if the plaintiff recover in the action, which must be brought within one year after the offence, against any inhabitant, and take out execution against him, all the other inhabitants of that hundred shall be rateably and proportionably taxed towards an equal contribution for the relief of the defendant; which tax must be raised by such ways, and in such manner as is prescribed for raising damages recovered against the hundreds in cases of robbery, by the act 27 *Eliz. c. 13. viz.*



two justices (*quorum unus*) may tax the towns, villages, parishes, and hamlets in the hundred, to make an equal contribution, &c.

No person shall recover damages by virtue of this act, unless they or their servants, within two days after such damage done them, give notice of such offence to some of the inhabitants of some town, village, or hamlet, near the place where the fact was committed, and shall, within four days after such notice, give in their examination upon oath, or the examination upon oath of their servants, &c. before any justice of the peace of the county, &c. where the fact was committed, inhabiting within or near the said hundred, whether they know the persons that committed the fact; and if they confess that they do know the persons, or any of them, then they shall be bound by recognizance to prosecute the offenders.

If a person delivers goods to another pretending to buy them, and he runs away with them, it is felony, for the goods were not properly out of possession of the owner by his delivery, but by completing the contract, which was then only begun, and running away shews a felonious intention.

And if goods are delivered to a carrier or porter, &c. to carry to a certain place, and he carrieth them to another place, and converted them to his own use, it is felony; so if one come into a market or fair, &c. pretending to buy a horse, and the owner giveth him leave to ride the horse, and try his paces, and he rideth away with him, it is felony; and stealing of goods let to a person in lodgings is felony.

By stat. 4 *Geo.* 2. all persons who shall by day or night feloniously steal and take away, or wilfully or maliciously hire any other person to steal from any whitening or bleaching croft, lands, fields, or grounds, bowking-house, drying-house, or other building or place, made use of by any whitster, crofter, bowker, or bleacher, for whitening any linen, fustian, or cotton cloth, or cloth made of cotton and linen yarn, linen or cotton tape, incle, filletting, laces, or any linen or cotton goods, to the value of 10s. or who shall buy such goods, knowing them to be stolen, being convicted thereof, shall be guilty of felony, and suffer death without benefit of clergy, unless the judge or court shall think it reasonable, upon the circumstances of the case, that the offender shall be transported to some of the plantations beyond the seas; in which case they, or any subsequent court with like authority, to be holden for the same place, may order the convict to be transported for seven years, as is directed by the acts of 4 *Geo.* 2. c. 11. and 6 *Geo.* 1. c. 23.

And if any person ordered to be transported shall refuse so to be, or break prison, escape, come on shore, or return before the time expired, he shall suffer death.

By stat. 4 *Geo.* 2. all persons who shall steal, rip, cut, or break, with intent to steal any lead, iron bar, iron gate, iron palisado, or iron rail, being fixed to any dwelling-house, out-house, coach-

house, stable, or other building, belonging to a dwelling-house, or other building, or fixed in a garden, orchard, coach-yard, or fence belonging to such building, shall be judged guilty of felony, and be transported for seven years; and all persons assisting in such stealing, or buying the same, knowing them to be stolen, are thereby declared to be liable to the same punishment.

Felony may be committed by making use of a process at law, fraudulently to obtain goods, viz. by procuring a replevin where a man hath no property, and by that means getting a horse delivered to him, this is a felonious taking; so is getting goods out of a house upon an ejectment, where a man hath no title.

To destroy or kill sheep in the night-time is felony: and transporting sheep beyond sea, first offence, forfeiture of goods, imprisonment for one year, &c.; and the second offence felony.

If a feme covert commit felony by the command of her husband, and both are concerned in the same felony, the wife is excused; but it is no excuse in a servant to say he did it by order of his master; and if a woman commit murder by the consent of her husband, it is felony.

Cheapening goods in a shop, and then running away with them, is felony.

So carrier and porter disposing of goods delivered them to carry, guilty of felony.

So if a shepherd steal sheep, or a butler plate, or a carrier goods, though delivered them.

But if a wife alone steal goods, or receive stolen goods or a felon into her house, or lock up goods in a chest, knowing them to be stolen, and her husband is not privy to it, this is felony in the wife.

A feme covert cannot steal her husband's goods; but if she is taken away with them against his consent, it is felony; so it is if she deliver the goods of her husband to an adulterer, this is felony in him.

When felonies are committed in the reign of one king, the prosecution may be in the reign of another; and where felonies are committed in one county, and the offender is taken in another, he may be imprisoned where taken, and removed to be prosecuted where the fact was done; but if he carry the goods which he hath stolen with him, it is felony in every county where they are carried. Officers may break open a house to take a felon, or any other suspected thereof; 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 murder.

For the more effectual apprehending of felons, by statute 10 and 11 W. 3. c. 3. it is enacted, that where any person shall apprehend a felon for stealing any thing to the value of 5s. out of a coach-house, stable, or warehouse, either in the day-time or in the night, and the offender shall be convicted thereof, such apprehender shall have a certificate, under the hand of the judge before whom such conviction was, setting forth the same, and within what



parish the felony was committed, and the person so taken or discovering the felon; and if there are many persons concerned, the certificate is to be divided into shares. This certificate may be assigned once, and no more; but persons having made use of such exemption, shall not then assign over the said certificate; and the original proprietor, or his assignee, shall be discharged of all parish duties in the parish and ward wherein such felony shall be committed. It must be enrolled by the clerk of the peace of that county in which it shall be granted.

If a man is convicted of felony, or stands mute, or challenges above twenty jurors, it shall be lawful to proceed against the accessory, notwithstanding the principal had his clergy, was pardoned, or otherwise delivered before attainder. And every accessory shall suffer the same punishment, if convicted, or stand mute, or challenge above twenty persons, as he should have suffered if the principal had been attained.

If any person shall commit burglary, house-breaking, or felony in stealing horses, or any money, wares, or goods, and being out of prison, shall discover two more who have committed such felony, or cause two or more to be discovered, apprehended, and convicted, such discoverer shall have the king's pardon, which shall be a good bar to an appeal to be brought for the same.

He who buys stolen goods, knowing the same to be stolen, or who shall receive or conceal any burglar, felon, or thief, knowing them to be so, shall be adjudged accessory to the fact, and being convicted shall suffer death. But if the principal felon cannot be taken, then the buyer or receiver of the goods which he stole shall be prosecuted only for a misdemeanor, and fined and imprisoned, or suffer any other corporal punishment as the court shall inflict, though the principal felon is not convicted; and this shall exempt the accessory from any farther punishment, if it shall happen that the principal should afterwards be convicted.

Persons convicted of feloniously taking away, in the day time, money, goods, or chattels, of the value of 5*s.* in any dwelling-house, or out-house belonging and used to and with any dwelling-house, though no person be in the said house, or, &c. at the time of such felony committed, shall not have their clergy:

Any person or accessory robbing another, or taking away any goods, &c. from a dwelling-house, or that shall break any dwelling-house, shop, or warehouse, in the day time, and feloniously take away money, &c. to the value of 5*s.* though no person be therein, being convicted, or being indicted, shall stand mute, or not directly answer to the indictment, or shall challenge above twenty persons of the jury, shall not have clergy.

If a servant receives money upon an obligation, or upon sale of wares, and goes away with the money, not felony within the statute 21 *H. 8. cap. 7.* because he had not the money by the delivery of his master: but if he had the money by the delivery of his master, or of another servant of his master's, and goes away with

it, so as it be to the value of 40s. this is felony; but not if he goes away with a bond.

On stat. 21 H. 8. c. 7, it was held, first, that it extends only to such as were servants both at the time of the delivery and stealing of the goods; secondly, it does extend only to goods delivered as to be kept, and not casual receipts.

If any person forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any letter of attorney, or other authority or instrument, to transfer, assign, sell, or convey any share in any capital stock and fund of any body politic or corporate, established by act of parliament; or to receive any annuity or dividend, or shall demand, or endeavour to obtain any share in stock transferred, or annuities, or dividends to be received by virtue of such forged letter of attorney, &c. or shall personate any real proprietors, and thereby transfer, or endeavour to transfer the stock, or to receive the money for the same, every such person being thereof convicted shall suffer death as a felon.

If one conceal a felony, it is misprision of felony, for which a man is fineable; for every man is bound, as much as he may, to prevent and hinder such evils; and therefore if one stand by, and look on whilst a man is slain, and do not his best to prevent it, or after he is wounded, to seize the murderer, he may be indicted and fined for it. And so if he seize him, and after let him escape.

FEOFFMENT may be defined to be the gift of any corporeal hereditament to another. He that so gives, or enfeoffs, is called the feoffer; and the person enfeoffed is denominated the feoffee.

But by the mere words of the deed, the feoffment is by no means perfected. There remains a very material ceremony to be performed, called livery of seisin; without which, the feoffee hath but a mere estate at will.

The end and design of this institution was, by this sort of ceremony or solemnity, to give notice of the translation of the feud from one hand to another; because if the possession might be changed by the private agreement of the parties, such secret contracts would make it difficult and uncertain to discover in whom the estate was lodged, and consequently the lord would be at a loss of whom to demand his services; and strangers equally perplexed to discover against whom to commence their actions for the prosecution and recovery of their right: to prevent therefore this uncertainty, the ceremony of livery and seisin was instituted.

*Of the several sorts of livery.* The livery in deed is the actual tradition of the land, and is made either by the delivery of a branch of a tree or a turf of the land, or some other thing, in the name of all the lands and tenements contained in the deed; and it may be made by words only, without the delivery of any thing; as if the feoffer upon the land, or at the door of the house, says to



the feoffee, I am content that you shall enjoy that land according to the deed, this is a good livery to pass the freehold.

The livery within view, or the livery in law, is when the feoffer is not actually on the land, or in the house, but being in sight of it, says to the feoffee, I give you yonder house, or land, go and enter into the same, and take possession of it accordingly; this livery in law cannot be given or received by an attorney, but only by the parties themselves.

But this sort of livery is not perfect to carry the freehold till an actual entry made by the feoffee, because the possession is not actually delivered to him, but only a licence or power given him by the feoffer to take possession of it; and therefore if either the feoffer or feoffee die before livery and entry made by the feoffee, the livery within the view becomes ineffectual and void; for if the feoffer die before entry, the feoffee cannot afterwards enter, because then the land immediately descends upon his heir, and consequently no person can take possession of his land without an authority delegated from him who is the proprietor; nor can the heir of the feoffee enter, because he is not the person to whom the feoffer intended to convey his land, nor had he an authority from the feoffer to take the possession; besides, if the heir of the feoffee were admitted to take possession after his father's death, he would come in as a purchaser, whereas he was mentioned in the feoffment to take as the representative of his ancestor, which he cannot do, since the estate was never vested in his ancestor.

A feoffment cannot be made of a thing of which livery cannot be given, as of incorporeal inheritances, such as rent, advowson, common, &c. though it be an advowson, &c. in gross.

A man may either give or receive livery in deed by letter of attorney; for since a contract is no more than the consent of a man's mind to, a thing, where that consent or concurrence appears, it were most unreasonable to oblige each person to be present at the execution of the contract, since it may as well be performed by any other person delegated for that purpose by the parties to the contract.

There are few or no persons excluded from exercising this power of delivering seisin, for monks, infants, femes covert, persons attainted, outlawed, excommunicated, villains, aliens, &c. may be attorneys; for this being only a naked authority, the execution of it can be attended with no manner of prejudice to the persons under these incapacities or disabilities, or to any other person who by law may claim any interest of such disabled persons after their death.

FERÆ NATURÆ, animals, *feræ naturæ*, of a wild nature, are those in which a man hath not an absolute, but only a qualified and limited property, which sometimes subsists, and at other times doth not subsist. And this qualified property is obtained either by the art and industry of man, or the impotence of the animals themselves, or by special privilege.

A qualified property may subsist in animals *feræ naturæ*, by the

art and industry of man, either by his reclaiming and making them tame, or by so confining them that they cannot escape and use their natural liberty; such as deer in a park, hares or conies in an enclosed warren, doves in a dove-house, pheasants or partridges in a mew, hawks that are fed and commanded by the owner, and fish in a private pond, or in trunks. These are no longer the property of a man, than while they continue in his keeping, or actual possession; but if at any time they regain their natural liberty, his property ceases; unless they have *animus revertendi*, which is only to be known by their usual custom of returning.

A man may have a qualified property in animals, *feræ naturæ*, by special privilege; that is, he may have the privilege of hunting, taking and killing them, in exclusion of other persons. Under which head may be considered, all those animals which come under the denomination of game. Hence a man may have a transient property in these animals, so long as they continue within his liberty, and may restrain any strangers from taking them therein: but the instant they depart into another liberty, this qualified property ceases.

Larceny cannot be committed of things *feræ naturæ*, while at their natural liberty; but if they are made fit for food, and reduced to tameness, and known by the taker to be so, it may be larceny to take them.

*FIERI FACIAS*, a writ judicial, that lies at all times within the year and day, for him who hath recovered in an action of debt or damages, to the sheriff, to command him to levy the debt or damages, of his goods against whom the recovery was had.

Upon a *fieri facias*, the sheriff cannot deliver the defendant's goods to the plaintiff in satisfaction of his debt; nor ought he to deliver them to the defendant against whom execution is; but the goods are to be sold, and in strictness, the money is to be brought into court.

If the defendant die after the execution awarded, and before it be served, yet it may be served upon his goods in the hands of his executor or administrator; for if the execution be awarded, the goods are bound, and the sheriff need not take notice of his death.

And upon *fieri facias*, the sheriff may take any thing but wearing clothes.

*FILACER* or *FILAZER*, an officer of the court of common pleas, so called because he filed those writs whereon he makes out process. There are fourteen of them in their several divisions and counties; and they make out all writs and processes upon original writs, issuing out of chancery, as well in real, as in personal and mixed actions; and in actions merely personal, where the defendants are returned summoned, they make out pones and attachments, which being returned and executed, if the defendant appear not, they make forth a *distringas*, and so *ad infinitum*, or until he doth appear; if he be returned *nihil*, then process of *capias* infinite, &c. They enter all appearances and special bails, upon



any process made by them. They make the first *scire facias* upon special bails, writs of *habeas corpus*, *distringas*, *nuper vicecomitem vel ballivum*, and *duces tecum*, and all *super sedecis* upon special bail or otherwise; writs of *habeas corpus cum causa*, upon the sheriff's return, that the defendant is detained with other actions; writs of adjournment of a term, in case of pestilence, war, or public disturbance.

**FINDING.** Any person finding any thing, has a special property therein, but he is answerable to the person in whom is the general property, but has a right against every person but the loser. The finder is not answerable for a mere nonfeasance or neglect; yet if he make gain of, or abuse, or spoil the things he finds, he shall be answerable.

If bank-bills, tickets, &c. stolen or lost, are paid to or delivered to another, without consideration, an action lies against any one in whose hands they are found: and the law seems to be the same though a consideration were given, if the party had previous notice of their being lost or stolen.

But the property of goods found or stolen, may be changed by sale for a valuable consideration, and without notice, in a market overt, and the party purchasing them obtains a title to them, against the original owner.

**FINE.** A fine is sometimes said to be a feoffment of record, though it might with more accuracy, be called an acknowledgment of a feoffment on record; by which it is to be understood, that it hath at least the same force and effect with a feoffment, in the conveying and assuring of lands: though it is one of those methods of transferring estates of freehold by the common law, in which livery of seisin is not necessary to be actually given, the supposition and acknowledgment thereof in a court of record, however fictitious, inducing an equal notoriety. But more particular, a fine may be described to be, an amicable composition or agreement of a suit, either actual or fictitious, by leave of the king or his justices; whereby the lands in question become, or are acknowledged to be the right of one of the parties. In its original, it was founded on an actual suit commenced at law, for the recovery of the possession thus gained by such composition, and was found to be so sure and effectual, that fictitious actions were, and continue to be, every day commenced, for the sake of obtaining the same security.

*Operation of a fine levied.* The force and effect of a fine principally depend upon the common law, and the two statutes 4 H. 7. c. 24. and 32 H. 8. c. 36. the ancient common law, with respect to this point, is forcibly declared by 18 Ed. 1. c. 4. The fine is so high a bar, and of so great force, and of a nature so powerful in itself, that it precludes not only those which are parties and privies to the fine, and their heirs, but all other persons whatsoever who are of full age, out of prison, of sound memory, and within the four seas, on the day of the fine levied, unless they put in their claim within a year and a day, and by 4 H. 7. c. 24. five years after proclamation made.

A fine extends to parties, privies, and strangers; and the parties and privies are foreclosed by it presently, and the strangers in future.

The parties are either cognizors or the cognizees; and these are immediately concluded by the fine, and barred of any latent right they might have, even though under the legal impediment of coverture. And indeed this is almost the only act that a feme covert is permitted by law to do (and that because she is privately examined, as to her voluntary consent, which removes the general suspicion of compulsion by her husband), it is therefore the usual, and almost the only safe method, whereby she may join in the sale, settlement, or incumbrance, of any estate.

Privies to a fine, are such as are any way related to the parties who levy the fine, and claim under them by any right of blood, or other right of representation: such as are the heirs general of the cognizor, the issue in tail, the vendee, the devisee, and all others who must make title by the persons who levied the fine.

Strangers to a fine, are all other persons in the world, except only parties and privies; whose right is bound unless they make claim within five years after proclamation made, except femes coverts (not being parties to the fine) infants, prisoners, persons beyond the seas, and such as are not of sound mind: who have five years allowed to them and their heirs, after such impediment removed.

Persons also, that have not a present, but a future interest only, as in remainder or reversion, have five years allowed to claim in, from the time that such right accrues. And if within that time they neglect to claim, or if they do not conformably to the statute 4 Anne, c. 16. bring an action to try the right, within one year after making such claim, and prosecute the same with effect, all persons whatsoever, are barred of whatever right they may have, by force of the statute of non claim.

And the courts of law will not suffer a fine to be impeached (when once levied) on account of any defect of understanding, or even lunacy or idiocy, of the cognizer.

But in order to make a fine of any avail, it is necessary that the parties have some interest in the lands to be effected by it; otherwise two strangers, by confederacy, might defray the owners, by levying fines of their lands.

For if the attempt be discovered, they can be no sufferers as to the estate in question, but must only remain in *statu quo*; whereas if a tenant for life levy a fine, it is an absolute forfeiture of his estate to the remainder man or reversioneer, if claimed in proper time. It is not therefore to be supposed that such tenants will often run so great a hazard; but if they do, and the claim is not duly made within five years after the respective terms expire, the estate is for ever barred by it.

Regularly a fine may be levied of any thing, whereof a *præcipe quod reddat*, or *facias* lies, as the writ of customs and services: or whereof a *præcipe quod permittant*, as to have common, a way,



&c. or to be short, where a *præcipe quod teneat* doth lie, as the writ of covenant to levy a fine, and the like.

Fines are now levied in the court of common pleas at Westminster, on account of the solemnity thereof, ordained by 18 *Ed.* 1. stat. 4. before which time, they were sometimes levied in the exchequer, in the county courts, courts baron, &c. They may be acknowledged before the lord chief justice of the common pleas, as well in as out of court; and two of the justices of the same court have power to take them in open court; also justices of 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*.

The chief justice of common pleas may, by the prerogative of his place, take cognizance of fines in any place out of the court; and certify the same without any *dedimus potestatem*. But the chief justice of England cannot, nor any of the justices, except the chief justice of the common pleas, who hath this special authority by custom and not by statute.

**FINES FOR OFFENCES.** Originally all punishments were corporal; but after the use of money, when the profits of the courts arose from the money paid out of the civil causes, and the fines and confiscations in criminal ones, the commutation of punishments was allowed of, and the corporal punishment which was only *in terrorem*, changed into the pecuniary, whereby they found their own advantage. This begat the distinction between the great and the less offences: for in the *crimina majora*, there was at least a fine to the king, which was levied by a *capiatur*; but upon the less offences there was only an amercement, which was affeered, and for which a *distringas*, or action of debt only lay.

By the bill of rights 1 *W.* stat. 2. c. 2. excessive fines ought not to be imposed, and all grants and promises of fines and forfeitures of particular persons, before conviction, are declared to be illegal and void.

All courts of record, may fine and imprison an offender, if the nature of the offence be such as deserves such punishment.

But no court, unless of record, can fine or imprison. And all courts of law that have power given them to fine and imprison, are thereby made courts of record.

The sheriff in his torn, may impose a fine on all such as are guilty of any contempt in the face of the court, and may also impose what reasonable fine he shall think fitting upon a suitor refusing to be sworn, or upon a bailiff refusing to make a pannel, &c. or upon a tithing-man neglecting to make his presentment, or upon one of the jury refusing to present the articles wherewith they are charged, or upon a person duly chosen constable, refusing to be sworn.

Also the steward of a court leet may by recognizance bind any person to the peace who shall make an affray in his presence, fitting the court, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him:

in which case he may afterwards impose a fine according to his discretion.

Also the sheriff in his torn, and the steward of a court leet, have a discretionary power, either to award a fine or amercement for contempt of the court; for a suitor's refusing to be sworn, &c. and the steward of a court leet may either amerce or fine an offender, upon an indictment of an offence not capital, within his jurisdiction, without any farther proceeding or trial; especially if the crime were any way enormous. as an affray accompanied with wounding.

Some courts cannot fine or imprison, but amerce, as the county, hundred courts, &c.

But some courts can neither fine, imprison, nor amerce; as ecclesiastical courts held before the ordinary, archdeacon, &c. or their commissaries, and such who proceed according to the canon or civil law.

A fine may be mitigated the same term it was set, being under the power of the court during that time; but not afterwards. And fines assessed in court by judgment upon an information cannot be afterwards mitigated. If a fine certain is imposed by statute on any conviction, the court cannot mitigate it; but if the party come in before conviction, and submit to the court, they may assess a less fine; for he is not convicted, and perhaps never might. The court of exchequer may mitigate a fine certain, because it is a court of equity, and they have a privy seal for it.

**FIRES AND FIRECOCKS.** Churchwardens in London, and within the bills of mortality, are to fix firecocks, &c. at proper distances in streets, and keep a large engine and hand engine for extinguishing fire, under the penalty of 10*l.* And to prevent fires, workmen in the city of London, &c. must erect party walls between buildings, of brick or stone of a certain thickness, &c. under the penalties therein mentioned.

On the breaking out of any fire, all the constables and beadles shall repair to the place with their staves, and be assisting in putting it out, and causing people to work. No action shall be had against any person in whose house or chamber a fire shall accidentally begin.

**FIREWORKS.** It is not lawful for any person to make or cause to be made, or sell or expose to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; or to permit the same to be cast or fired from his house or other place thereto belonging, into any public street or road; or to throw or fire, or be aiding in throwing and firing the same, in any public street, house, shop, river, or highway; and every such offence shall be adjudged a common nuisance.

**FIRST FRUITS AND TENTHS.** First fruits are the profits of every spiritual living for one year, and tenths are the tenth part of the yearly value of such living, given anciently to the pope through all Christendom; but by stat. 26 *H. 8. c. 3.* translated to the king here in England, for the ordering whereof there was a



court erected, 32 *H. 8. c. 45.* but again dissolved *anno primo Marice.* And since that time, though those profits be reduced again to the crown, by the stat. 1 *Eliz. c. 4.* yet was the court never restored, but all the matters therein wont to be handled, were transferred to the exchequer.

By stat. 26 *H. 8.* the lord chancellor, bishops, &c. are empowered to examine into the value of every ecclesiastical benefice and preferment in their several dioceses; and every clergyman entered on his living before the first fruits are paid or compounded for, is to forfeit double value. But stat. 1 *Eliz. c. 4.* ordains, that if an incumbent on a benefice do not live half a year, or is ousted before the year expire, his executors are to pay only a fourth part of the first fruits; and if he live the year and then die, or be ousted in six months after, but half the first fruits shall be paid; if a year and a half, three quarters of them; and if two years, then the whole; not otherwise. The archbishops and bishops have four years allowed for the payment, and shall pay one quarter every year, if they live so long upon the bishopric: other dignitaries in the church pay theirs in the same manner, as rector and vicar.

By 27 *H. 8. c. 8.* no tenths are to be paid for the first year, as then the first fruits are due, and by several statutes of Anne, if a benefice be under 50*l.* per annum, clear yearly value, it shall be discharged of the payment of first fruits and tenths.

The queen also restored to the church, what at first had been thus indirectly taken from it, by remitting the tenths and first fruits entirely, but, by applying these superfluities of the larger benefices, to make up the deficiencies of the smaller; for this purpose she granted a charter, whereby all the revenue of the first fruits and tenths is vested in trustees for ever, to form a perpetual fund for the augmentation of poor livings under 50*l.* a year. This is usually called Queen Anne's bounty, which has been still further regulated by subsequent statutes: though it is to be lamented that the number of such poor livings is so great, that this bounty, extensive as it is, will be slow, and almost imperceptible in its operation; the number of livings under 50*l.* certified by the bishops, at the commencement of the undertaking, being 5597, the revenues of which, on a general average, did not exceed 23*l.* per annum.

FISH. Concerning the right and property of fish, it has been held, that where the lord of the manor has the soil on both sides of the river, it is good evidence that he has the right of fishing; but where the river ebbs and flows, and is an arm of the sea, there it is common to all, and he who claims a privilege to himself must prove it. In the Severn, the soil belongs to the owners of the land, on each side; and the soil of the river Thames, is in the king, &c. but the fishing is common to all.

And if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river, or stream, pond, pool, or other water, (not in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-house, but in any other enclosed ground, being private property) he shall on convic-

tion before one justice, on the oath of one witness, forfeit 5*l.* to the owner of the fishery of such river, pond, or other water; and such justice, on complaint upon oath, may issue his warrant to bring the person complained of before him; and if he shall be convicted before such justice, or any other of the county or place, he shall immediately pay the said penalty of 5*l.* to such justice, for the use of the person, as the same is appointed to be paid unto; and, in default thereof, shall be committed by such justice to the house of correction, for any time not exceeding six months, unless the forfeiture shall be sooner paid: or such owner of any fishery may, within six calendar months after the offence, bring an action for the penalty in any of the courts of record at Westminster.

**FORCIBLE ENTRY AND DETAINER.** Forcible entry is a violent actual entry into a house or land, &c. or taking a distress of any person, weaponed, whether he offer violence or fear of hurt to any there, or furiously drive any out of the possession thereof.

Where one or more persons, armed with unusual weapons, violently enter into the house or land of another; or where they do not enter violently, if they forcibly put another out of his possession; or if one enter another's house, without his consent, although the doors be open, &c. these are all forcible entries punishable by the law. So when a tenant keeps possession of the land at the end of his term against the landlord, it is a forcible detainer.

If any person be put out or disseised of any lands and tenements in a forcible manner, or put out peaceably, and after holden out with strong hand, the party grieved shall have assise of novel disseisin, or writ of trespass against the disseisor; and if he recover (or if any alienation be made to defraud the possessor of his right, which is also declared by the statute to be void) he shall have treble damages, and the defendant shall also make fine and ransom to the king.

But as this action is at the suit of the party, and only for the right, it lies only where the entry for the defendant was not lawful, for though a man enter with force, where his entry is lawful, he shall not be punished by way of action; but he may be indicted by the statute, for the indictment is for the force and for the king; and he shall make fine to the king, be his right ever so good.

He shall recover treble damages, as well for the mesne occupation, as for the first entry; and though he shall recover treble damages, he shall recover costs which shall be trebled also; for the word damages, includes costs and suit.

An indictment will lie at common law for a forcible entry, though generally brought on the statutes; but it must shew on the face of it sufficient actual force.

If the party grieved will lose the benefit of his treble damages and costs, he may have the assistance of the justices at the general sessions, by way of indictment on the statute 8 *H.* 6. which being found there he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff.



Forcible entry and detainer are also punishable under the statute, by one justice of the peace, and by *certiorari*.

FORESTALLING, is the buying or bargaining for any corn, cattle, or other merchandize, by the way, before it comes to any market or fair, to be sold; or by the way, as it comes from beyond the seas, or otherwise, towards any city, port, haven, or creek, of this realm, to the intent to sell the same again at a higher price.

At the common law, all endeavours to enhance the common price of any merchandize, and all practices which have an apparent tendency thereto, whether by spreading false rumours, or by purchasing things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment.

Several statutes have from time to time been made against these offences in general, which were repealed by 12 *Geo. 3. c. 71*.

But though these offences are no longer combated by the statutes, they are all still punishable upon indictment at the common law, by fine and imprisonment.

FORFEITURE, is a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments; whereby he loses all his interest therein, and they go to the party injured, as a recompence for the wrong which either he alone, or the public together with him, have sustained.

The offences which induce a forfeiture of lands, and tenements are principally the following: treason, felony, misprision of treason, *præmunire*, drawing a weapon on a judge, or striking any one in the presence of the king's court of justice, and popish recusancy, or non-observance of certain laws enacted in restraint of papists.

By the common law, all lands of inheritance whereof the offender is seised in his own right, and also all rights of entry to the lands in the hands of a wrong doer, are forfeited to the king on an attainder of high treason, although the lands are holden of another; for there is an exception in the oath of fealty, which saves the tenant's allegiance to the king; so that if he forfeits his allegiance, even the lands he held of another lord are forfeited to the king, for the lord himself cannot give of lands but upon that condition.

Also upon an attainder of petit treason or felony, all lands of inheritance, whereof the offender is seised in his own right, as also all rights of entry to lands in the hands of wrong doer, are forfeited to the lord of whom they are immediately holden; for this, by the feudal law, was deemed a breach of the tenant's oath of fealty in the highest manner; his body, with which he had engaged to serve the lord, being forfeited to the king, and thereby his blood corrupted, so that no person could represent him; and all personal estates, whether they are in action or possession, which the party has, or is entitled unto, in his own right, and not as exe-

cutor or administrator to another, are liable to such forfeiture in the following cases :

1st. Upon a conviction of treason or felony.

But the lord cannot enter into the lands holden of him upon an escheat for petit treason or felony, without a special grant, till it appear, by due process, that the king hath had his prerogative of the year, day, and waste.

As to forfeiture of goods and chattels, it seems agreed, that all things whatsoever which are comprehended under the notion of a personal estate, are liable to such forfeiture.

2nd. Upon a flight found before the coroner, on view of a dead body.

3rd. Upon an acquittal of a capital felony, if the party be found to have fled.

4th. If a person indicted of petit larceny and acquitted be found to have fled for it, he forfeits his goods as in cases of grand larceny. But the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight: and it seems agreed that the particulars of the goods found to be forfeited may also be traversed.

5th. Upon a presentment by the oaths of twelve men that a person arrested for treason or felony, fled from, or resisted those who had him in custody, and was killed by them in the pursuit or scuffle.

6th. If a felon waive, that is, leave any goods in his flight from those who either pursue him, or are apprehended by him so to do, he forfeits them, whether they are his own goods, or goods stolen by him; and, at common law, if the owner did not pursue and appeal the felon, he lost the goods for ever: but by 21 H. 8. c. 11. for encouraging the prosecution of felons, it is provided, that if the party came in as evidence on the indictment, and attaint the felon, he shall have a writ of restitution.

7th. If a man be *felo de se*, he forfeits his goods and chattels.

8th. A convict within clergy forfeits all his goods, though he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. But, on burning in the hand, he ought to be immediately restored to the possession of his lands.

The forfeiture upon an attainder of treason or felony shall have relation to the time of the offence, for the avoiding all subsequent alienation of the lands; but to the time of conviction, or *fugam fecit* found, &c. only as to chattels, unless the party were killed in flying from, or resisting those who had arrested him; in which case it is said that the forfeiture shall relate to the time of the offence.

FORGERY, is where a person counterfeits the signature of another with intent to defraud, which, by the law of England, is made a capital felony.

A receipt to a cash memorandum is not a receipt on acquittance for the payment of money within 2 Geo. 3. c. 25. against forgery.



Forgery may be committed by making a mark in the name of another person.

It may also be committed in the name of a person who never had existence.

And it may be committed of an instrument, though such an instrument as the one forged does not exist either in law or fact.

Indorsing a real bill of exchange with a fictitious name is forgery, although the use of a fictitious name was not essential to the negociation, or any warrant or order for paying money or delivering goods. In the construction of the 7 *Geo. 2. c. 22.* it has, however, been decided, that an order to a shopkeeper in a forged name to deliver goods to the bearer is not a forgery within that statute; for a warrant or order within it must import that the person giving such warrant or order has, or at least claims, an interest in the money or goods which are the subject matter of that warrant or order; that he has, or at least assumes, a disposing power over such money or goods, and takes upon himself to transfer the property, or custody of them, to the person in whose favour such warrant or order is made. And it must be directed to the person who has the custody of the goods. But a draft upon a banker in the name of a person who kept no cash at such banker's is a forgery within the statute, because it takes for granted that cash was kept at the house, which the drawer had authority to dispose of.

If a person puts his own name to an instrument, representing himself to be a different person of that name with an intent to defraud, he is guilty of forgery.

Where, however, a bill of exchange is indorsed by a person in his own name, and another represents himself to be such person, he is not guilty of forgery, but it is a misdemeanor.

In order to prevent the forgery of bank notes, the 41 *Geo. 3. c. 41.* humanely enacts, that if any one shall knowingly have in his possession, or in his house, any forged bank notes, knowing the same to be forged, without lawful excuse, (the proof thereof to lie upon the person accused) he shall be guilty of felony, and shall be transported for 14 years. And if any person shall make any plate or instrument for forging bank-notes, or any part of a bank note, or shall, knowingly, have them in his possession, without authority from the governor and company of the Bank of England, he shall be guilty of felony, and shall be transported for seven years.

Altering an entry of money received, made by a cashier of the bank, in the bank book of a person keeping cash there, by prefixing a figure to increase the amount of the sum received, is forging a receipt for money.

A receipt indorsed on a bill of exchange in a fictitious name is forgery, although such name does not purport to be the name of any particular person.

If a person who has for many years been known by a name which was not his own, and afterwards assume his real name, and



in that name draw a bill of exchange, he will not be guilty of forgery, although such a bill were drawn for fraudulent purposes.

If any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in the false making or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promissory note for payment of money, acquittance, or receipt, either for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be false, forged, or counterfeited, he shall be guilty of felony, without benefit of clergy, but not to work corruption of blood, or disherison of heirs.

Forging or imitating stamps to defraud the revenue is forgery by the several stamp acts; and the receiving them is made single felony, punishable with seven years transportation.

*FORMA PAUPERIS*, is when any person has cause of suit, and is so poor that he cannot support the usual charges of suing at law or in equity. In this case, upon his making oath that he is not worth 5*l.* his debts being paid, and bringing a certificate from some lawyer that he has just cause of suit, the judge admits him to sue in *forma pauperis*; that is, without paying fees to counsellor, attornies, or clerk: and he shall have original writs and subpoenas gratis.

And he shall, when plaintiff, be excused from costs, but shall suffer other punishment, at the discretion of the judge. And it was formerly usual to give such paupers, if nonsuited, their election either to be whipped or pay the costs, though the practice is now disused.

It seems agreed that a pauper may recover costs, though he pay none; for although the counsel and clerks are bound to give their labour to him, yet they are not bound to give it to his antagonist.

*FRANCHISE*, is taken for a privilege or exemption from ordinary jurisdiction, and sometimes an immunity from tribute; it is either personal or real, that is, belonging to a person immediately, or else by means of this or that place, or court of immunity, whereof he is either chief or a member.

*FRAUD*. All deceitful practices in defrauding, or endeavouring to defraud, another of his own right, by means of some artful device, contrary to the plain rules of common honesty, are condemned by the common law, and punishable according to the heinousness of the offence.

The distinction laid down, as proper to be attended to in all cases of this kind, is this, that in such impositions or deceits where common prudence might guard persons from the offence, it is not indictable, but the party is left to his civil remedy; but where false weights or measures are used, or false tokens produced, or such measures taken to defraud or deceive as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable.

Persons convicted of obtaining money or goods by false pre-



tences, or sending threatening letters to extort money or goods, may be punished by fine and imprisonment, or by whipping, or transportation.

Beside this act, various other statutes have at different times been passed by the legislature to prevent frauds, of which the following are the most material, viz.

By 1 Ric. 2. c. 9. 4 Hen. 4. c. 7. and 11 Hen. 6. c. 3. a feoffment of lands, or gifts of goods by fraud, or for maintenance, shall be void; and actions may be maintained against such feoffers as take the profits.

By 3 Hen. 7. c. 4. all deeds of gifts of goods and chattels to the use of the person who made the same, to the intent to defraud creditors, shall be void.

By 13 Eliz. c. 5. all fraudulent conveyances, bonds, and deeds, made to defraud or hinder creditors, shall be void; and parties and privies shall forfeit one year's value of lands, and the whole value of goods, and so much money as shall be mentioned in such bonds. But common recoveries shall be good, and the act shall not extend to voucher in formedon, or to purchasers for a valuable consideration.

By 27 Eliz. c. 4. conveyances made to defraud a purchaser, against such purchaser only, shall be void; and parties justifying the conveyance as made *bona fide*, shall forfeit one year's value of the lands, and be imprisoned half a year. Where lands are conveyed with clause of revocation, and afterwards sold for valuable consideration, the first conveyance shall be void against the vendee; but mortgages made *bona fide* are not impeached. And statutes merchant shall be entered in six months, and for searching the same, the fee is 2*d.* a term.

By 29 Car. 2. c. 3. (usually called the STATUTE of FRAUDS), parol leases of freehold shall have the force of estates at will only, except leases not exceeding three years, whereon this rent reserved amounts to two-thirds of the improved value. No action shall be brought upon any special promise to charge any executor or administrator to answer damages out of his own estate, or to charge any defendant for the debt of another, or upon any agreement on consideration of marriage, or upon any contract for lands, or any interest therein, or upon any agreement that is not to be performed within one year, unless the agreement, or memorandum thereof, be in writing, signed by the party. No contract for sale of goods, for 10*l.* or more, shall be good, except the buyer accept part of the same, or give earnest, or some memorandum be made.

By 3 and 4 W. and M. c. 14. wills of lands shall be deemed, only as against bond creditors, to be fraudulent. And they may sue the devisee and the heir of the obliger, jointly; and such devisee shall be chargeable for a false plea, as an heir. Devises for raising younger children's portions, pursuant to marriage contract, shall be good. If the heir or devisee aliens before action brought, he shall still be liable to the value of the land.

**FREEHOLD**, may be in deed or in law. A freehold in deed, in actual seisin of lands or tenements in fee simple, fee tail, or for life. A freehold in law, is a right to such lands or tenements before entry or seizure.

So there is a seisin in deed, and a seisin in law; a seisin in deed, is when a corporal possession is taken; and a seisin in law, is where lands descend before entry, or where something is done which amounts in law to an actual seisin.

Tenant in fee simple, or fee tail for life, is said to have a freehold, so called, because it distinguishes it from terms of years, chattels, upon uncertain interests, lands in villenage, or customary or copyhold lands.

A freehold cannot be conveyed to pass *in futuro*, for then there would be want of a tenant against whom to bring a *præcipe*, and therefore, notwithstanding such conveyance, the freehold continues in the vender: but if livery of seisin be afterwards given, the freehold from thence passes to the vendee.

A man is said to be seized of freehold, but to be possessed of other estates, as of copyhold lands, leases for years, or goods and chattels.

**FRIENDLY SOCIETIES.** These prudent institutions are exclusively peculiar to the British dominions: and as the most beneficial effects have resulted from them, the legislature has placed them under various salutary regulations, calculated on the one hand to give full effect to their benevolent design, and on the other to prevent frauds in conducting them. The following are the principal clauses of the different acts of parliament relating to benefit societies, viz.

By the *33 Geo. 3. c. 54. s. 1.* any number of persons may form themselves, and establish one or more society or societies of good fellowship, for raising, by subscription of the members thereof, or by voluntary contribution, a fund for the mutual relief or maintenance of their members in old age, sickness, and infirmity, or for the relief of the widows and children of deceased members; and such members, or such member of them as shall be appointed a committee for that purpose, may assemble together and make such rules, orders, and regulations for the government of the same, as to a majority of such society, or committee thereof so assembled, shall seem meet, so as the same be not contrary to the law, nor to this act. And they may impose such reasonable fines and forfeitures upon the members who shall offend against such rules, orders, and regulations, as shall be just and necessary for duly enforcing the same, to be paid for the use of such society, as they shall by such rules, orders, or regulations direct; and they may alter and amend such rules, orders, and regulations, as occasion shall require, or annul and repeal the same, and make new ones in lieu thereof.

Provided, that all such rules, orders, and regulations, with all convenient speed after the same shall be made, altered, or amended, and also after every making, altering, or amending thereof, shall



be exhibited in writing to the justices at the sessions, or adjournment thereof for the county or place where such society shall be established; and such rules, orders, and regulations shall be subject to the review of such justices, who may, after due examination at the then or the next subsequent sessions, annul and make void all such rules, orders, and regulations as shall be repugnant to this act, and shall allow and confirm such as shall be conformable thereto; and after having been so confirmed, shall be signed by the clerk of the peace at such sessions, and a duplicate thereof on parchment shall be deposited with and filed by the clerk of the peace of such sessions without fee, and the same shall be binding upon all parties.

And by the 43 G. 3. c. 111. such society who shall have exhibited the rules, &c. made for government thereof, at any general or quarter sessions having peculiar jurisdiction for the place where such society is established, and not to the sessions for the county, &c. at large, may exhibit the rules, &c. of such society at the general quarter sessions, or at any adjournment thereof, to be holden for the county, &c. where such society is established; such rules, &c. bearing the certificate of the town clerk or other proper officer, of the time when such rules, &c. were respectively first exhibited as aforesaid; or may exhibit in like manner a duplicate or a true copy of such rules, &c. with an affidavit annexed, to be taken before any justice of the county where such society is established, of the time when such rules, &c. so first exhibited, subject to the like examination, review, allowance, and confirmation of such last mentioned general quarter sessions, or adjournment thereof, as is directed by the 33 G. 3. c. 54. s. 2. and such rules, &c. being confirmed by such last mentioned general quarter sessions, or any adjournment thereof, in the manner directed by the said recited act, may be filed at such sessions, and shall be as valid and effectual from the time the same were first exhibited at the sessions having such peculiar jurisdiction as aforesaid, as if the same had been originally exhibited and filed at the sessions held for the said county, riding, division, or shire.

Provided, that no rule, order, or regulation, confirmed in manner aforesaid, shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society, convened by public notice in writing, signed by the secretary or clerk, in pursuance of a requisition by three or four members, and publicly read at the two usual meetings of such society held next before such general meeting for that purpose, unless a committee of such members shall have been nominated for that purpose, in which case such committee shall be convened in like manner; and that such alteration or repeal shall not be binding, unless made with the approbation of three-fourths of the members or committee then present, and agreed to and confirmed by the justices of such sessions or adjournment, as aforesaid. Such society may, at a general meeting, or by their committee, appoint such officers as shall be necessary for carrying into execution the purposes of such institution,

and may require of them security for the faithful discharge of their offices. But no bond or other security given in pursuance of this act shall be chargeable with stamp duty.

Every such society may elect any number of the members thereof, but not less than eleven, to be a committee, whose acts shall have as much force as if done at a general meeting; the powers of standing committees to be declared in the rules of the society, and filed at the sessions aforesaid, and of particular ones (five of the members of which will at least be necessary to concur in any act of such committee) to be entered in a book by the secretary or clerk.

Committees are controllable by the society; and treasurers or trustees may, with the consent of such society, lay out the surplus of such contributions as the exigencies of the society do not call for, either upon private security, or may vest the same in the public funds, in either case in the name of such treasurer or trustee; and, with the consent of the society, may alter and transfer such securities and funds, and make sale thereof respectively, bringing the proceeds, dividends, and interest thereof to account for the use of the society.

Treasurers are to render accounts, and to pay over the balances remaining in their hands, and in default thereof, the society may exhibit a petition in chancery, without paying any fees or stamp duties.

If any person appointed to any office by any such society, and having in his hands any money, effects, or securities belonging to the same, shall die, or become bankrupt, or insolvent, his creditors, administrators, or assigns, shall, within forty days, after demand made by the order of the society, or the major part of them assembled at any meeting, deliver all things belonging to such society to such person as they shall appoint, and shall pay out of the assets or effects all money remaining due, before any of his other debts. All the effects belonging to such societies shall be vested in the treasurer, or trustee for the time being, for the benefit of the society, and after his death or removal, shall, without any transfer or assignment whatever, vest in his successor, who may bring and defend actions, which shall not be discontinued by the death or removal of such person.

Before any of the rules, &c. of such societies shall be allowed, it shall be declared by one or more of the general rules, &c. of such society, for what intent and purpose it is intended to be established, and it shall be therein specified to what uses and purposes the money which shall be subscribed, paid, or given, for the benefit thereof, &c. shall be applied, and under what circumstances any member or other person shall become entitled to the same, or any part thereof. And by the same section it is provided, that it shall not be lawful for any such society to dissolve or determine the same, or direct the division or distribution of such stock, or any part thereof, so long as the intents and purposes declared by them remain to be carried into effect, without the consent of five-sixths of



the then existing members, and also of all person then receiving or entitled to receive relief, testified under their hands. All rules, orders, &c. to be entered in a book, and signed by the members, who may at all reasonable times inspect the same; and are to be received in evidence in all courts.

Societies may receive donations, which shall be applied in like manner as the contributions of the several members.

Members thinking themselves aggrieved may, on oath, complain to two justices, who may hear and determine the same without appeal. Where general rules direct disputes to be settled by arbitration, whatever award, order, or determination such arbitrators, or the major part of them, make, according to the true purport and meaning of the rules of such society, shall be binding and conclusive without appeal.

By the 49 G. 3. c. 125. if any person, having been admitted a member of any society established under the authority of the 33 G. 3. c. 54. shall offend against any of the rules, orders, and regulations of such society, it shall be lawful for any two justices, residing within the county, riding, division, shire, stewardry, city, liberty, or place, within which such society shall be held, upon complaint made, on oath, by any member, to summon such person against whom such complaint shall be made; and upon his appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, such justices shall proceed to hear and determine the said complaint according to the rules, &c. of the said society, confirmed as directed by the said act, and shall make such order thereon as to them shall seem just; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not, on notice of such order, forthwith pay the sum of money so adjudged to the person or persons, and in the manner directed by this act, such justices shall, by warrant under their hands and seals, cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, together with such costs as shall be awarded by the said justices, and also the costs and charges attending such distress and sale.

**GAME.** It is a maxim of the common law, that goods of which no person can claim any property, belong to the king by his prerogative. Hence those animals *feræ naturæ*, which come under the denomination of game, are styled in our laws his majesty's game; and that which he has he may grant to another; in consequence of which another may prescribe to have the same, within such a precinct or lordship. And hence originated the right of lords of manors, or others, to the game within their respective liberties. As the sole right of taking and destroying game belongs exclusively to the king, as such he may authorize the only persons who can acquire any property, however fugitive and transitory, in the animals coming under that denomination.

For the preservation of these species of animals, for the recreation and amusement of persons of fortune, to whom the king with

the advice and assent of the parliament, has granted the same, and to prevent persons of inferior rank from misemploying their time the following acts of parliament have been made. The common people are not injured by these restrictions, no right being taken from them which they ever enjoyed; but privileges are granted to those who have certain qualifications therein mentioned, which before rested solely in the king.

Certificates, to be dated the day of the month when issued, and shall be in force till the 1st of July following and no longer; and if any clerk of the peace, his deputy, or steward, clerk, &c. issue certificates otherwise than directed, to forfeit 20*l*.

No person to destroy game until he has delivered an account of his name and place of abode to the clerk of the peace, or his deputy, or to the sheriff, or steward, clerk of the county, riding, shire, stewartry or place where such person shall reside, and annually take out a certificate thereof, which must have a stamp duty of 3*l*. 13*s*. 6*d*. Their servants or gamekeepers duly registered, 1*l*. 5*s*.

Any person counterfeiting or forging any seal or stamp directed to be used by this act, with intent to defraud the revenue, or shall utter or sell such counterfeit, on conviction thereof shall be adjudged a felon, and shall suffer death without benefit of clergy; and all provisions of former acts relative to stamp duties, to be in force in executing this act.

Every qualified person shooting at, killing, taking, or shooting any pheasant, partridge, heath-fowl, or black game, or any grouse or red game, or any other game, or killing, taking, or destroying, any hare, with any greyhound, pointer, spaniel, setting dog, or other dog, without having obtained such certificate, shall forfeit the sum of 20*l*.

Clerks of the peace or their deputies, or the sheriff, or steward clerks, in their respective counties, ridings, shires, stewartries, or places, shall on or before November 1, 1785, or sooner if required by the commissioners of his majesty's stamp duties, transmit to the head office of stamps in London, a correct list in alphabetical order, of the certificates by them issued between the 25th day of March in the year 1785, and the 1st of October in the same year; and shall also in every subsequent year, on or before the 1st of August in each year, make out and transmit to the stamp office in London, correct alphabetical lists of the certificates so granted by them, distinguishing the duties paid on each respective certificate so issued, and on delivery thereof, the receiver-general of the stamp duties shall pay to the clerk of the peace, &c. for the same, one halfpenny a name; and in case of neglect or refusal, or not inserting, a full, true, and perfect account, he shall forfeit 20*l*.

Lists may be inspected at the stamp office of 1*s*. each search; which lists shall once or oftener in every year, be inserted in the newspapers in each respective county.

If any qualified person, or one having a deputation, shall be found in pursuit of game, with gun, dog, or net, or other engine for the destruction of game, or taking or killing thereof, and shall



be required to shew his certificate, by the lord or lady of the manor, or proprietor of the land whereon such person shall be using such gun, &c. or by any duly appointed game-keeper, or by any qualified, or certified person, or by any officer of the stamps, properly authorized by the commissioners, he shall produce his certificate: and if such person shall refuse, upon the production of the certificate granted to him for the like purpose; or in case of not having such certificate to produce, shall refuse to tell his christian and surname, and his place of residence, and the name of the county where his certificate was issued, or shall give in any false or fictitious name, he shall forfeit 50*l*.

Certificates do not authorize any person to shoot at, kill, take, or destroy, any game at any time that is prohibited by law, nor give any person a right to shoot at, &c. unless he be duly qualified by law.

No certificate obtained under any deputation, shall be pleaded or given in evidence, where any person shall shoot at, &c. any game out of the manors or lands for which it was given. The royal family are exempted from taking out certificates for themselves or their deputies.

*Conies.* Destroying conies, transportation.

Robbing warrens, felony without clergy.

Killing them in the night, or endeavouring to kill them, fine of 10*s*. or commitment.

Unqualified person using gun to kill them, same may be seized.

*Deer.* Stalking deer without leave 10*l*.

Hunting or killing them 10*l*. costs, and sureties for good behaviour.

Buck stalls or engines kept by unqualified persons may be seized.

Selling, or buying them to sell again, 40*l*.

Coursing, or killing them without consent, 20*l*.

Hunting, taking, killing, or wounding, 30*l*. or transportation.

Destroying pales or walls of enclosed grounds, without consent, 30*l*.

Keeper of parks privately killing or taking them, 50*l*.

Robbing places where kept, felony without clergy.

By the 51 *G. 3. c. 120.* reciting that whereas by the 42 *G. 3. c. 107.* no provision was made for mitigating the penalties thereby imposed for committing the offences therein mentioned, it is enacted that, on conviction of offenders under that act, the magistrate may mitigate the penalty of 50*l*. to 20*l*.

*Game-keepers.* All lords of manors or other royalties may appoint game-keepers, and empower them to kill game.

But if game-keeper dispose of the game without the lord's consent, he shall be committed for three months, and kept to hard labour.

But no lord shall make above one game-keeper within one manor, with power to kill game, and his name shall be entered with the clerk of the peace; certificate whereof shall be granted by clerk

of the peace on payment of 10s. 6d. Unqualified game-keeper killing or selling hare, pheasant, partridge, moor, heath-game, or grouse, he shall forfeit 5*l.* by distress, or commitment for three months, for the first offence, and for every other, four.

No lord shall appoint unqualified game-keeper, or one who is not *bona fide* servant to such lord, or immediately employed and appointed to take and kill game for the sole use of the lord; other persons under colour of authority for taking and killing game, or keeping any dogs or engines whatsoever for that purpose, shall forfeit 5*l.* in like manner.

Every deputation of a game-keeper to be registered with clerk of the peace, or in the sheriff's or steward's court books of the county, &c. where the lands lie, and annually take out certificate thereof, stamped with an half-guinea stamp.

Every game-keeper from and after the passing of this act, who shall deliver his name and place of abode as aforesaid, and require a certificate, shall be annually entitled thereto, stamped as before directed from clerk of the peace or his deputy, sheriff, or steward, clerk, &c. to the effect of the form in the act set forth.

Clerk of the peace, &c. after signing certificate, shall issue the same stamped, to the person registering the deputation, on requiring the same, for which he may receive 1*s.*

If any person to whom any deputation or appointment of a game-keeper shall have been, or at any time thereafter shall be granted, by any lord or lady of a manor, &c. shall for the space of twenty days after the deputation or appointment shall be granted, neglect or refuse to register the same, and take out a certificate as aforesaid, shall forfeit and pay the sum of 20*l.* to be applied as the law directs.

Neglect, or refusal of issuing certificates, incurs a forfeiture of 20*l.* recoverable in the courts of Westminster, court of session, of justiciary, or exchequer in Scotland, by action of debt or information, for the use of the plaintiff with double costs of suit.

Clerk of the peace, &c. may issue his certificate to any game-keeper first appointed in any year after 1st of July in that year.

If any lord or lady of a manor, or proprietor of land, shall make any new appointment of a game-keeper, and shall register the deputation with the clerk of the peace, &c. and shall obtain a new certificate thereon, the first shall be void; and any person acting under the same, after notice, shall be liable to all the penalties of the game-laws, and those against unqualified persons.

*Hares.* Every person tracing or coursing hares in the snow shall be committed for one year, unless he pay to the churchwardens, for the use of the poor, 20*s.* for every hare, or become bound by recognizances, with two sureties in 20*l.* a piece, not to offend again: and every person taking or destroying hares with any sort of engine, shall forfeit, for every hare, 20*s.* in like manner. Persons found using engines liable to the punishment inflicted, as above, by 31 *Eliz.* c. 5. Unqualified persons keeping or using shooting



dogs, or engines to kill or destroy hares, shall forfeit 5*l.* to the informer, with double costs, by distress, or committed for three months for the first offence, and for every other, four. Taking or killing hares in the night-time forfeit 5*l.* the whole to the informer with double costs. Killing or taking with gun, dog, or engine, hares in the night, between the hours of seven at night and six in the morning, from Oct. 12 to Feb. 12, and between the hours of nine at night and four in the morning, from Feb. 12 to Oct. 12, or in the day-time upon Sunday or Christmas-day, to forfeit not less than 10*l.* nor more than 20*l.* for the first offence; nor less than 20*l.* nor more than 30*l.* for the second offence; and 50*l.* for the third offence, with costs and charges; and, upon neglect or refusal, be committed for six or twelve calendar months, and may be publicly whipped: final appeal to the quarter sessions. Persons armed and disguised stealing them, felony without clergy. Higler, chapman, carrier, inn-keeper, victualler, or alehouse-keeper, having in his custody, or buying, selling, or offering to sale, any hare, unless sent up by some person qualified (or any person selling, exposing, or offering for sale, hares, &c.) shall forfeit for every hare 5*l.* the whole to the informer.

*Heath-fowl.* For preserving heath-cocks or polts, no person whatsoever, on any waste, shall presume to burn, between Feb. 2 and June 24, any grig, ling, heath, furze, goss, or fern, on pain of commitment for a month, or ten days, to be whipped and kept to hard labour. Shooting heath-cocks, grouse, or moor-game, contrary to 1 *Jac.* 1. c. 27. and killing any of them in the night, or using gun, dog, or engine, with such intent, contrary to 9 *Anne.* c. 25. and 13 *G.* 3. c. 80. and carriers, and others having such in their possession, contrary to 9 *Anne.* c. 14. are all liable to the same penalties, and recoverable in the same manner as those offences are subjected to shooting, &c. hares.

*Partridges.* Taking partridges by nets or other engines, upon another's freehold, without special leave of the owner of the same, penalty 10*l.* half to him who shall sue, and half to the owner or possessor. Shooting, &c. at partridges, with gun or bow, or taking them, &c. with dogs or nets, by 7 *Jac.* 1. c. 11. or taking their eggs out of their nest, liable as persons shooting, &c. at hares, and also 20*s.* for every bird or egg. Selling, or buying to sell again, a partridge (except reared and brought up in houses, or from beyond sea) forfeit for every partridge 10*s.* half to him who will sue, and half to the informer. Taking, killing, or destroying partridges in the night, forfeits for every partridge, 10*s.* half to him who will sue, and half to the lord of the manor, unless he license, or cause the said taking or killing, in which case his half shall go to the poor, recoverable by churchwarden; and if not paid in ten days, to be imprisoned for one month; and moreover shall give bond to the justice, with good sureties, not to offend again for two years. To kill a partridge in the night, penalty 5*l.* The whole whereof is given to the informer, and may be recovered within three months, before a justice of peace, or within six months, by

action in the courts of record at Westminster, with double costs. Keeping or using any greyhounds, setting dogs, or any engine for destroying partridges, penalty 5*l.* to be levied and recovered as the like penalty for killing hares.

By the 13 *G. 3. c. 80. s. 1.* if any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy any hare, pheasant, partridge, moor-game, or heath-game, in the night-time, viz. between seven o'clock at night and six in the morning, from the 12th of October to the 12th of February, and between nine o'clock at night and four in the morning, from the 12th of February to the 12th of October; or in the day-time, on a Sunday or on Christmas-day, he shall, on conviction, forfeit for the first offence a sum not exceeding 20*l.* nor less than 10*l.*; for the second, not exceeding 30*l.* nor less than 20*l.*; and for the third and every subsequent offence, 50*l.* or on default of payment, be imprisoned for not less than six months, nor more than twelve, and be whipped at the end of the imprisonment.

And by 39 and 40 *G. 3. c. 50.* after reciting, that idle and disorderly persons frequently assemble and assist each other in the destruction of game in the night, and, if interrupted, are guilty of violence, to the terror of the people, it is enacted, that if any persons, to the number of two or more, shall enter into, or be found in any forest, chace, park, wood, plantation, paddock, field, meadow, or other open or enclosed ground, in the night, namely, between eight o'clock at night and six in the morning, from the 1st of Oct. to the 1st of February, or between ten o'clock at night and four in the morning, from the 1st of February to the 1st of October, having any gun, net, engine, or other instrument for the purpose and with intent to destroy, or shall wilfully destroy, take, or kill any hare, pheasant, partridge, heath-fowl, commonly called black game, or grouse, commonly called red game, or any other game; or if any person shall be found with any gun, fire-arms, bludgeon, or other offensive weapon, protecting, aiding, abetting, or assisting any such persons as aforesaid, the ranger, owner or occupier thereof, or their keepers or servants, or any other person, may apprehend any such offender, and deliver him into the custody of a peace officer, who shall convey him before a justice, or in case any such offender shall not be so apprehended, any justice, on information on oath of one witness, may issue his warrant to apprehend such offender; and if it shall appear to such justice, on the oath of one witness, that such person is guilty of any of the offences aforesaid, he shall be deemed to be a rogue and vagabond within the meaning of the 17 *G. 2. c. 5.* and shall suffer as therein directed.

Carriers and others having partridges in their possession, liable to the same forfeitures and penalties as having hares; and the same law against shooting them as for shooting hares.

*Pheasants.* All the laws respecting the penalties and recovery of them, for taking them by nets, snares, or other engines, without license of the owner, by 11 *H. 8. c. 17.* and for shooting or destroy-



ing them with dogs or snares, &c. by 7 *Jac.* 1. c. 11. or taking their eggs, by 1 *Jac.* 1. c. 27. and for selling, -and buying them to sell again, by last cited act (except that the penalty for a pheasant is 20s.) and for destroying them in the night (except as aforesaid) by 23 *Eliz.* c. 10. 9 *Anne.* c. 25. and 13 *G.* 3. c. 80. and for keeping or using sporting dogs or engines for destroying them on Sunday or Christmas-day, by 13 *G.* 3. c. 80. and for carriers and others having them in their possession; all these laws are *mutatis mutandis*, *verbatim*, the same as those respecting partridges.

*Prosecutions.* Any one prosecuted for any thing done in pursuance of this act, may plead the general issue, and give the special matter in evidence for his defence; and if upon trial, verdict pass for the defendant, or plaintiff become nonsuited, defendant shall have treble costs of plaintiff.

*Qualifications* for killing game, are 1. having a freehold estate of 100*l.* per annum, 22 and 23 *Car.* 2. c. 25. 2. A leasehold estate for 99 years, of 150*l.* per annum. 3. The eldest son or heir apparent to an esquire, or person of superior degree. 4. The owner or keeper of a forest, park, chace, or warren. Unqualified person, keeping dogs or engines to destroy game, to forfeit 5*l.*

No person (other than the king's son) unless he have lands of freehold to the value of five marks a year, shall have any game of swans, on pain of forfeiting them, half to the king, and half to any person, so qualified, who shall seize the same.

Any gentleman or other that may dispend 40*s.* a year freehold, may hunt and take wild fowls with their spaniels only, without using a net or other engine, except the long bow. From persons not having lands of 40*s.* a year, or not worth in goods 200*l.* using gun or bow to kill deer, any person having 100*l.* may seize the same to his use.

Every person qualified to kill game, shall, previous to his shooting at, killing, or destroying any game, take out a certificate.

*Sporting Seasons.* The time for sporting in the day, is from one hour before sun rising until one hour after sun setting.

*For Bustards.* The sporting season is, from December 1 to March 1.

For grouse, or red grouse, from August 11 to December 10.

Hares may be killed all the year, under the restriction, in 10 *G.* 3. c. 19.

Heath-fowl, or black game, from August 20 to December 20. 13 *G.* 3. c. 55. But by 50 *G.* 3. c. 55. the time within which heath-fowl may be taken in the New Forest (Hampshire), and in the counties of Devon and Somerset, is between December 10 and September 1.

Partridges, from September 1 to February 12.

Pheasants, from October 1 to February 1.

Widgeons, wild ducks, wild geese, wild fowls, at any time but in June, July, August, and September.

Summary proceedings, from and after March 1, 1785, in all cases where the penalty by this act doth not exceed 20*l.* justice of peace

shall, upon information or complaint, summon the party and witnesses to appear, and proceed to hear and determine the matter in a summary way, and upon due proof by confession, or upon the oath of one witness, give judgment for the forfeiture; and issue his warrant for levying the same on the offender's goods, and to sell them, if not redeemed within six days, rendering to the party the overplus; and if his goods be insufficient to answer the penalty, shall commit the offender to prison, there to be for six calendar months, unless the penalty be sooner paid; and if the party be aggrieved by the judgment, he may, upon giving security amounting to the value of the forfeitures, with the costs of the affirmance, appeal to the next general quarter sessions, when it is to be heard and finally determined; and in case the judgment be affirmed, the sessions may award such costs, incurred by the appeal, as to themselves shall seem meet.

Witnesses neglecting or refusing to appear, without reasonable excuse, to be allowed of by the justice, shall respectively forfeit for every offence 10*l.* to be levied and paid as other penalties by this act.

Justice to cause conviction to be made out, to the effect of the form set forth in the act.

Justice may mitigate penalties as he thinks fit, so that reasonable costs and charges of the officers and informers, for discovery and prosecution, be always allowed, over and above mitigation, and so as the same does not reduce the penalties to less than a moiety, over and above the costs and charges, any thing therein contained to the contrary notwithstanding; and no such conviction shall be removable by the *certiorari* into any court whatsoever.

No offender against this act to be imprisoned more than three months.

The duties to be paid to the receiver-general of the stamp duties, and by him paid into the exchequer.

*Swans.* It is felony to take any swans that be lawfully marked, though they be at large; and so it is unmarked swans, if they be domestical or tame, so long as they keep within a man's manor, or within his private river, or if they happen to escape from them, and are pursued and taken, and brought back again; but if they be abroad, and attain their natural liberty, then the property of them is lost, and so long felony cannot be committed by taking them.

*Wild Fowl.* Same laws against shooting wild fowl as for shooting hares.

**GAMING.** From the destructive and pernicious consequences which much necessarily attend excessive gaming, both the courts of law and equity have shewn their abhorrence of it; but the playing at cards and dice, &c. when practised innocently and as a recreation, the better to fit a person for business, is not at all unlawful, nor punishable as any offence whatsoever.

And as the gaming in the manner just mentioned may be lawful, yet if a person be guilty of cheating, as by playing with false



at common law, and fined and imprisoned according to the circumstances of the case, and heinousness of the offence.

Also all common gaming-houses, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood.

It was therefore by 16 *Car.* 2. c. 7. enacted, that if any person of what degree soever, shall by any fraud, unlawful device, or other ill practice, in playing at cards, dice, tables, tennis, bowls, skittles, shuffle-board, or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes, game or games whatsoever, or bearing a share or part in the stakes, or by betting on both sides of such as shall play, act, ride, or run as aforesaid, win or obtain to himself any sum of money or other valuable things, he shall forfeit treble the value; half to the king, and half to the party grieved, or who shall lose the money or thing so won or obtained, (provided he shall sue in six months) otherwise to any other person who shall sue in one year next after the said six months, by action of debt, bill, plaint, or information, in any of the courts of record at Westminster, with treble costs.

And by 9 *Anne*, c. 14. it is further enacted, that if any person do or shall, by any fraud or shift, cosenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, or any of the games aforesaid, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win, obtain, or acquire, to himself or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever, or shall at any time or sitting, win of any more person or persons whatsoever, above the sum of 10*l.*; that then, every person or persons so winning by such ill practice as aforesaid, or winning at any one time or sitting, above the said sum or value of 10*l.*; and being convicted of any of the said offences, upon an indictment or information to be exhibited against him or them for that purpose, shall forfeit five times the value of the sum or sums of money, or other things so won as aforesaid; and in case of such ill practice as aforesaid, shall be deemed infamous, and shall suffer such corporal punishment, as in case of wilful perjury; and such penalty to be recovered by such person or persons as shall sue for the same by such action as aforesaid.

And any person who shall at any one time or sitting, by playing at cards, dice, tables, or other game or games whatsoever, or by betting on the sides of such as do play, lose to any one or more persons so playing or betting, in the whole, the sum or value of 10*l.* and shall pay or deliver the same, or any part thereof, the person so losing and paying, or delivering the same, shall be at liberty within three months then next, to sue for and recover the same, with costs, in any court of record; and if he shall not sue in three

months, it shall be lawful for any person to sue for and recover the same, and treble value, with costs, half to the person who will sue for the same, and half to the poor of the parish where the offence shall be committed.

Upon the construction of these words "at any one time or sitting," in this statute, it has been held, that where fourteen guineas had been won and paid after a continuance at play, except an interruption during dinner, it was to be considered as won at one time or sitting; but the court said, that if the action had been brought for the penalty, by a common informer, they would have held, that the money had been lost at two sittings.

And every person who shall be liable to be sued for the same, shall be obliged to answer on oath such bill as shall be preferred against him, for discovering the sum of money or thing so won.

If any person shall play at cards, dice, tables, tennis, bowls, skittles, shuffle-board, or any other pastime, game or games whatsoever, other than with and for ready money, or shall bet on the sides of such as shall play, or shall lose any sum or other thing exceeding 100*l.* at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same when he shall so lose it, he shall not in such case be bound to make it good, but the contract, or contracts for the same, and for every part thereof, and all assurances and securities for the same shall be void and of no effect; and the winner shall forfeit treble value, of all such sums or other things as he shall so win above 100*l.* half to the king, and half to him who shall sue, within one year, in any of the courts of record at Westminster, with treble costs.

And all notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, where the whole or any part of the consideration of such securities and conveyances shall be for money or other valuable things won by gaming, or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever; or by betting on the sides of such as do game at any of the games aforesaid; or for the reimbursing or repaying of any money knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, or that shall, during such play so play or bet, shall be utterly void, frustrate and of none effect. And where such securities shall be of lands, tenements, or hereditaments, or such as incumber and affect the same; they shall enure and be to the sole use and benefit of, and devolve upon such persons as should or might have such lands, in case the said grantor, or person so incumbering the same had been dead: and all grants or conveyances to hinder them from devolving on such person shall be deemed fraudulent and void.

If therefore a bill of exchange be given for money won at play, it cannot be recovered upon, even by an indorsee who has given a valuable consideration for it, and without notice: for the original vice of the consideration affects the security, even in the hands of an innocent holder. And from a decision in the court of chancery, it seems that if money be paid on such security, it may be recover-



ed back: because payment under a void security cannot be supported. Nor does the limitation of three months (within which time the statute requires the loser of the money, actually paid at the time it is lost, to bring his action to recover it back) extend to payments on account of such void securities.

If any person shall win at play, or by betting, at any one time, the sum or value of 10*l.* or within the space of twenty-four hours, the sum or value of 20*l.* he shall be liable to be indicted for such offence in six months, either in the king's bench, or at the assizes; and being convicted, shall be fined five times the value of the sum won or lost; which, after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence, shall go to the poor.

And if one offender shall discover another, so that he be convicted, the discoverer shall be discharged from all penalties on account of such offence, if not before convicted thereof, and shall be admitted as an evidence to prove the same.

Any two justices may cause to come, or to be brought before them, every person whom they shall have just cause to suspect to have no visible estate, profession, or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such person do not make it appear to the said justices, that the principal part of his expenses is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for the space of twelve months; and in default of his finding such securities, shall commit him to the common gaol till he shall find such securities as aforesaid.

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sum or sums of money, or other thing or things, exceeding in the whole the value of 20*s.* such playing shall be deemed a forfeiture of the recognizance.

In order to prevent such quarrels as may happen on account of gaming; if any person shall assault and beat, or challenge to fight, any other person whatsoever, on account of any money won by gaming, playing, or betting, at any one of the games aforesaid, he shall on conviction thereof by information or indictment, forfeit to the king, all his goods, chattels, and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where the conviction shall be had, during the term of two years.

If any person who shall be licensed to sell any sorts of liquors, or who shall sell, or suffer the same to be sold, in his house, outhouse, ground, or apartment thereto belonging, shall knowingly suffer any gaming with cards, dice, draughts, shuffle-boards, mississippi, or billiard-tables, skittles, nine-pins, or with any other implement of gaming in his house, outhouse, ground, or apartment thereto belonging, by any journeymen, labourers, servants, or apprentices; and shall be convicted thereof on confession, or oath of one witness, before one justice, within six days after the offence committed, he

shall forfeit for the first offence 40s. and for every other offence 10*l.* by distress, by warrant of such justice, three-fourths to the churchwardens, for the use of the poor, and one-fourth to the reformers.

GAOL, a strong place wherein debtors are kept, and persons are confined, to answer for offences committed against the law. Gaols are of such universal concern to the public, that none can be erected by any less authority than an act of parliament.

All prisons and gaols belong to the king, although a subject may have the custody or keeping of them.

The justices of the peace at their general quarter sessions, or the major part of them, provided that such major part shall not be less than seven, upon presentment made by the grand jury at the assizes of the insufficiency, inconveniency, or want of repair of the gaol, may contract for the building, repairing, or enlarging the same, together with the yards, courts, and outlets thereof, and adding such other building, and making such conveniences as shall be thought requisite; or for erecting any new gaol within any distance not exceeding two miles from the scite, and in that case for selling the old gaol and the scite thereof, and also the materials of the old gaol; the contractors giving security to the clerk of the peace for the performance of the contract.

The expense of building, rebuilding, repairing, or enlarging such gaols, and such other necessary incidental expenses as aforesaid, shall be paid out of the county rate; and when the account of such expenses shall exceed half the amount of the ordinary annual assessment for the county rate, (to be computed at a medium for the last preceding five years,) the justices in sessions may borrow, in mortgage of the said rates, any sum not less than 50*l.* nor exceeding 100*l.* and may order the growing interest, and so much of the principal sum as shall be equal at least to such interest, to be paid off yearly, till the whole thereof shall be discharged, and an account thereof shall be kept in a book provided for that purpose; and such book shall be delivered into court at every quarter sessions, to be inspected by the justices, who shall make such orders relating thereto as to them shall seem meet; provided that the whole sum of money borrowed be fully paid within fourteen years from the time of borrowing it.

As there are several persons confined in the county and city gaols under sentence and orders made by one or more justices at their sessions, or otherwise, upon conviction in a summary way, without the intervention of a jury; it is therefore by 24 *Geo. 3. c. 56.* enacted, that any judge of assize, or two justices, within whose jurisdiction such gaol is situate, may remove such persons to any house of correction within the same jurisdiction, there to be confined, and to remain in execution of such sentence or order.

For the relief of prisoners in gaols, justices of the peace in sessions have power to tax every parish in the county, not exceeding 6*s. 8d.* per week, leviable by constables, and distributed by collectors, &c.



But it is observed by Lord Coke, that the gaoler cannot refuse the prisoner victuals, for he ought not to suffer him to die for want of sustenance.

If any subject of this realm shall be committed to any prison for any criminal, or supposed criminal matter, he shall not be removed from thence, unless it be by habeas corpus, or some other legal writ; or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity, on pain that the person signing any warrant for such removal, and he who executes the same, shall forfeit to the party grieved 100*l.* for the first offence, and 200*l.* for the second, &c.

By the 52 *Geo.* 3, c. 160. reciting, that whereas great distress is suffered by poor persons confined under mesne process for debt in such gaols as are not county gaols, in consequence of their not receiving any allowance whereon to subsist during the time of such confinement, it is enacted that any one justice may order parochial relief to poor debtors in such gaols as are not county gaols, who shall be confined in such gaol under mesne process for debt, and who shall appear to such justice to be unable to support himself or herself, and who shall have applied for relief to such overseer as aforesaid: such sum not to exceed 6*d.* *per diem* during the time of his or her confinement.

If the overseers doubt whether such poor person is legally settled in such parish, or place, they shall cause him or her to be examined upon oath before one or more justices of the peace, touching his or her last legal settlement, upon which examination it shall be lawful for justices to make an order for the removal of such poor person to the place of his last legal settlement, and to suspend the execution of such order of removal during the time of such person being confined in such gaol under such mesne process, which suspension of the same shall be endorsed on the said order, and signed by such justices, and the subsequent permission to execute the same shall be also endorsed on the said order, and signed by such justices, or by any other two justices of the peace acting for the said county, riding, or division.

A copy of the order of removal, and of the order for suspending the execution of the same, as aforesaid, shall, as soon as may be after the making thereof respectively, be served upon such overseers of the poor of the parish in which such poor person shall by such order of removal be adjudged to be legally settled, who shall repay the expense attending the pauper, not exceeding 6*d.* per day. And if the overseers refuse or neglect to pay any sum so advanced, within twenty-one days after demand thereof, and shall not within the same time give notice of appeal, one justice may, by warrant under his hand and seal, cause the money so directed to be paid to be levied by distress and sale of the goods and chattels of the person refusing or neglecting to pay the same, and also such costs attending the same, not exceeding 40*s.*; and if the parish, township, or place to which the removal was ordered to be made,

be without the jurisdiction of the justice issuing the warrant, then such warrant shall be transmitted to any justice having jurisdiction within such parish, township, or place as aforesaid, who, upon receipt thereof, is hereby authorized and required to endorse the same for execution: provided nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed 5*l.* the party or parties aggrieved by such order may appeal to the next general quarter sessions for the county, riding, or division, in which such gaol is situated, against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may, and is hereby directed, to strike out the sum contained in the said order, and insert the sum which, in the judgment of the said court, ought to be paid; and in every such case the court of quarter sessions shall direct that the said order, so amended, shall be carried into execution by the said justices by whom the order was originally made, or either of them, by such other justice or justices as the said court shall direct.

But the overseers of the poor of the parish, or place wherein such poor person shall, by such order of removal, be adjudged to be legally settled, may appeal against such order to the next general quarter sessions of the peace after the service of the copy of such order of removal, in case such copy shall have been served upon such overseers twenty-one days before the holding of such quarter sessions: but in case the same shall not be served twenty-one days before the holding of such next general quarter sessions, then the appeal may be to the next succeeding general quarter sessions, and upon such appeal the like proceedings may be had as are observed in other cases of appeals against orders of removal of poor persons by any law now in being: provided that in case such order of removal and suspension is not appealed against in manner aforesaid, or if upon appeal such order shall be confirmed, such poor person shall be deemed and taken to be legally settled in the place in which he shall by such order of removal be adjudged to be legally settled.

**GAOLER**, the person to whom custody of a prison or gaol is committed. The sheriffs are bound to appoint such persons gaolers for whom they must answer to the king, if it be a criminal matter, and to the party injured, if it be a civil affair. Besides the duties enjoined to gaolers by act of parliament, and the abuses for which, by statute, they are punishable, the common law subjects them to fine and imprisonment, as also to the forfeiture of their offices, for gross and palpable abuses in the execution of their offices.

Also gaolers are punishable by attachment, as all other officers are, by the courts to which they more immediately belong, for any gross misbehaviour in their offices, or contempt of the rules of such courts, and punishable by any other courts for disobeying writs of habeas corpus awarded by such courts, and not bringing up the prisoner at the day prefixed by such writs.



If the gaoler, by keeping the prisoner more strictly than he ought, occasion the prisoner's death, this is felony in the gaoler by the common law. Therefore, if a prisoner die in gaol, the coroner ought to sit upon him; and if the death were occasioned by cruel and oppressive usage on the part of the gaoler, or any officer of his, it will be deemed wilful murder in the person guilty of such duress.

But if a criminal, endeavouring to break gaol, assault the gaoler, he may be lawfully killed by him in the affray.

A gaoler is considered as an officer relating to the administration of justice, and is under the same special protection of the law that other ministers of justice are. If a person threaten him for keeping a prisoner in safe custody, he may be indicted, and fined and imprisoned for it.

If in the necessary discharge of his duty he should meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of such prisoners, he is not obliged to retreat as far as he can with safety, but may freely, and without retreating, repel force with force: and if the party so resisting happen to be killed, this will be justifiable homicide in the gaoler, or his officer, or any person coming in aid of him. On the other hand, if the gaoler, or his officer, or any person in aid of him, should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance; for it is homicide in defiance of the justice of the kingdom.

The justices in their sessions, or in any special adjournment held for such express purpose, may, if they shall think it necessary or proper, appoint salaries or allowances to gaolers, in lieu of the profits derived from the sale of liquors, as to them shall seem meet, and order the same to be paid out of the county rate, by a certificate of such allowance being signed by the chairman of the sessions: but no chairman shall sign such certificate, unless notice of such intended application, signed by the clerk of the peace, have been given fourteen days at least before the holding of such sessions, or adjournment thereof, by two several advertisements, in some newspaper, which shall be printed and circulated in each county.

It seems clearly agreed, that a gaoler by suffering voluntary escapes, by abusing his prisoners, by extorting unreasonable fees from them, or by detaining them in gaol after they have been legally discharged, and paid their just fees, forfeits his office; for that in the grant of every office it is implied that the grantee execute it faithfully and diligently.

**GAVELKIND.** Of the many opinions concerning the original of this custom, the most probable seems to be, that it was first introduced by the Romish clergy, and therefore propagated more extensively in Kent, because there the Christian religion was first propagated. This tenure is reckoned by the best antiquaries to be the same with the Saxon Bockland, which was allodial, and exempt from the feudal service.

**GIFT**, a transferring the property in a thing from one to another without a valuable consideration; for to transfer any thing upon a valuable consideration is a contract or sale: he who gives any thing is called the donor; and he to whom is given is called the donee.

By the common law, all chattels, real or personal, may be granted or given without deed, except in some special cases; and a free gift is good without a consideration, if not to defraud creditors.

But no leases, estates, or interests, either of freehold, or term of years, or any uncertain interest, not being copyhold of customary interest, of, in, to, or out of, any messuages, manors, lands, tenements, or hereditaments, shall at any time be assigned, granted, or surrendered, unless it be by deed or not in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

A gift of any thing without a consideration is good: but it is recoverable before delivery to the donee of the thing given.

**GLEANNING.** It hath been said, that by the common law and custom of England, the poor are allowed to enter and glean upon another ground after the harvest, without being guilty of trespass; and that this humane provision seems borrowed from the Mosaical law.

But it is now positively settled, by a solemn judgment of the court of common pleas, that a right to glean in the harvest field cannot be claimed by any person at common law: neither have the poor of a parish, legally settled, such a right.

**GOD AND RELIGION**, offences against. See **APOSTACY**, **BLASPHEMY**, **HERESY**, &c.

**GRANT**, a gift in writing of such a thing as cannot aptly be passed or conveyed by word only.

A grant is the regular method, by the common law, of transferring the property of incorporeal hereditaments, or such things whereof no livery of seisin can be had. For which reason all corporeal hereditaments, as lands and houses, are said to be in livery; and the others, as advowsons, commons, services, rents, reversions, and such like, lie in grant. He that granteth, is termed the grantor; and he to whom the grant is made, is termed the grantee. A grant differs from a gift in this, that gifts are always gratuitous; grants are upon some consideration or equivalent.

**GUARDIAN.** A guardian is one appointed by the wisdom and policy of the law to take care of a person and his affairs, who, by reason of his imbecility and want of understanding, is incapable of acting for his own interest; and it seems by our law, that his office originally was to instruct the ward in the arts of war, as well as those of husbandry and tillage, that when he came of age he might be the better able to perform those services to his lord whereby he held his own land.

There are several kinds of guardians, as, guardian by nature,



guardian by the common law, guardian by statute, guardian by custom, guardian in chivalry, guardian in soccage, and guardian by appointment of the lord chancellor.

*Guardian by nature*, is the father and mother; and here it should be observed, that by the common law every father hath a right of guardianship of the body of his son and heir until he attain to the age of twenty-one years.

This guardianship extends no further than the custody of the infant's person.

It yields as to the custody of the person to guardianship in soccage, where the title to both guardianships concur in the same individuals.

But guardianship in soccage ending at fourteen, it seems that after that age, the father or other ancestor, having a like title to both guardianships, becomes guardian by nature till the infant's age of twenty-one.

Lastly, the father may disappoint the mother, and other ancestors, of the guardianship by nature, by appointing a testamentary guardian, under the statutes 4 and 5 *P. et M. c. 8.* and 12 *Car. 2. c. 24.*

Guardian by nature, hath only the care of the person and education of the infant, and hath nothing to do with his lands merely in virtue of his office; for such guardian may be though the infant have no lands at all, which a guardian in soccage cannot.

*Guardian by the common law.* If a tenant in soccage die, his heir being under fourteen, whether he be his issue or cousin, male or female, the next of blood to the heir, to whom the inheritance cannot descend, shall be guardian of his body and land till his age of fourteen; and although the nature of soccage tenure be in some measure changed from what it originally was, yet it is still called soccage tenure, and the guardian in soccage is still only where lands of that kind, as most of the lands in England now are, descend to the heir within age; and though the heir, after fourteen, may choose his own guardian, who shall continue till he is twenty-one, yet, as well as the guardian before fourteen, as he whom the infant shall think fit to choose after fourteen, are both of the same nature, and have the same office and employment assigned to them by the law, without any intervention or direction of the infant himself; for they were therefore appointed, because the infant, in regard of his minority, was supposed incapable of managing himself and his estate, and consequently derive their authority not from the infant, but from the law; and that is the reason they transact all affairs in their own name, and not in the name of the infants, as they would be obliged to do if their authority were derived from him.

Hence the law has invested them, not with a bare authority only, but also with an interest till the guardianship ceases; and to prevent their abuse of this authority and interest, the law has made them accountable to the infant, either when he comes to the age of fourteen years, or at any time after, as he thinks fit; and therefore

are not to have any thing to their own use, as the guardian in chivalry had.

*Guardian by statute.* By the common law, no person could appoint a guardian, because the law had appointed one, whether the father were tenant by knight service, or in soccage.

The first statute that gave the father a power of appointing was the 4 and 5 P. and M. c. 8. which provides, under severe penalties, such as fine and imprisonment for years, that no one shall take away any maid or woman child unmarried, being within the age of sixteen years, out of, or from the possession, custody, or governance, and against the will of the father of such maid or woman child, or of such person or persons to whom the father of such maid or woman child, by his last will and testament, or by any other act in his lifetime, hath or shall appoint, assign, bequeath, give, or grant the order, keeping, education, and governance of such maid or woman child.

In the construction of this statute the following opinion has been holden :

That a testamentary guardian, or one formed according to this statute, comes in *loco parentis*, and is the same, in office and interest, with a guardian in soccage, and differs only as to the *modus habendi*, or in a few particular circumstances: as first, that it may be held for a longer time, viz. till the heir attain the age of twenty-one, where before it was but fourteen; secondly, it may be by other persons held, for before it was the next of kindred not inheritable could have it; and now who the father names shall have it.

*Guardian by custom.* By the custom of the city of London, the custody and guardianship of orphans under age, unmarried, belongs to the city.

By the custom of Kent, where any tenant died, his heir within age, the lord of the manor might and did commit the guardianship to the next relation within the court of justice in whose jurisdiction the land was; but the lord was bound on all occasions to call him to account; and if he did not see that the accounts were fair, the lord himself was bound to answer it. This province the lord chancellor hath taken from inferior courts, only in Kent, where these customs are continued.

*Guardian in chivalry.* By the common law, if tenant by knight service had died, his heir male being under the age of twenty-one years, the lord shall have the land holden of him till such heir had arrived at that age, because till then he was not intended to be able to do such service; and such lord had likewise the custody of the body of the infant, to bring him up, and inure him to martial discipline, and was therefore called guardian in chivalry.

*Guardian in soccage.* Guardians in soccage are also called guardians by the common law. Wardship is incident to tenure in soccage, but of a nature very different from that which was formerly incident to knight-service; for if the inheritance descend to an infant under



fourteen, the wardship of him does not, nor ever did, belong to the lord of the fee; because in this tenure no military or other personal service being required, there was no occasion for the lord to take the profits in order to provide a proper substitute for his infant tenant.

*Guardian by appointment of Lord Chancellor.* It is not easy to state how this jurisdiction was acquired; it is certainly of no very ancient date, though now indisputable: for it is clearly agreed, that the king, as *pater patriæ*, is universal guardian of all infants, idiots, and lunatics, who cannot take care of themselves; and as this care cannot be exercised otherwise than by appointing them proper curators or committees, it seems also agreed, that the king may, as he has done, delegate the authority to his chancellor; and that therefore, at this day, the court of chancery is the only proper court that hath jurisdiction in appointing and removing guardians, and in preventing them and others from abusing their persons or estates.

And as the court of chancery is now vested with this authority, hence in every day's practice we find that court determining as to the right of guardianship, who is the next of kin, and who the most proper guardian; as also orders are made by that court on petition or motion for the provision of infants during any dispute therein; as likewise guardians removed or compelled to give security; they and others punished for abuses committed on infants, and effectual care to prevent any abuses intended them in their persons or estates; all such wrongs and injuries being reckoned a contempt of that court, that hath an established jurisdiction for the protection of all persons under natural disabilities. But the court never appoints a guardian to a woman after marriage.

**GUNPOWDER AND COMBUSTIBLES.** No person shall make gunpowder but in the regular manufactories established at the time of making the stat. 12 *Geo.* 3. *c.* 61. or licensed by the sessions, pursuant to certain provisions, under forfeiture of the gunpowder and 2s. per lb. nor are pestle-mills to be used under a similar penalty.

Only 40 lbs. of powder to be made at one time under one pair of stones, except Battle-powder, made at Battle, and elsewhere in Sussex.

Not more than 40 cwt. to be dried at one time in one stove; and the quantity only required for immediate use to be kept in or near the place of making, except in brick or stone magazines, fifty yards at least from the mill.

Not more than 25 barrels to be carried in any land-carriage, nor more than 200 barrels by water, unless going by sea or coastwise, each barrel not to contain more than 100 lbs.

No dealer to keep more than 200 lbs. of powder, nor any person not a dealer more than 50 lbs. in the cities of London or Westminster, or within three miles thereof, or within any other city, borough, or market town, or one mile thereof, or within two miles of the king's palaces or magazines, or half a mile of any parish

church, on pain of forfeiture, and 2s. per lb. except in licensed mills, or to the amount of 300 lbs. for the use of collieries, within 200 yards of them.

GIPSIES are a kind of commonwealth among themselves of wandering impostures and jugglers, who made their first appearance in Germany about the beginning of the sixteenth century, and have since spread themselves over all Europe and Asia. By the laws of England, Gipsies were formerly subject to imprisonment and forfeiture of goods, but they are now considered chiefly as rogues and vagabonds, and are described as such in the vagrant act.

HABEAS CORPUS, a writ which a man indicted of a trespass before justices of the peace, or in a court of franchise, and being apprehended for the same, may have out of the king's bench, to remove himself thither at his own costs, and to answer the cause there.

This is the most celebrated writ in the English law. Of this there are various kinds made use of by the courts at Westminster for removing prisoners from one court into another, for the more easy administration of justice.

The most efficacious of which writs, in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*, which is the subject's writ of right in cases where he is aggrieved by illegal imprisonment, or any unwarrantable exercise of power.

This writ is founded upon common law, and has been secured by various statutes, of which the last and most efficacious was the 31st Car. 2. c. 2. which is emphatically termed the habeas corpus act. This act may justly be deemed a second magna charta.

By this important statute it is enacted, that on complaint in writing, by, or on behalf of, any person committed and charged with any crime, (unless committed for felony or treason, expressed in the warrant, or as accessory, or on suspicion of being accessory before the fact, to any petit treason or felony, plainly expressed in the warrant, or unless he be convicted or charged in execution by legal process,) the lord chancellor, or any other of the twelve judges in vacation, upon viewing a copy of the warrant, or affidavit that the copy is denied, shall (unless the party have neglected for two terms to apply to any court for his enlargement) award an habeas corpus for such prisoner, returnable immediately before himself, or any other of the judges; and upon return made, shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of judicature.

That such writs shall be endorsed, as granted in pursuance of this act, and signed by the person awarding them.

That the writ shall be returned, and the prisoner brought up within a limited time, according to the distance, not exceeding in any case twenty days.

That the officers and keepers neglecting to make due returns, or not delivering to the prisoner, or his agent, within six hours after demand, a copy of the warrant of commitment, or shifting the cus-



tody of a prisoner from one to another, without sufficient reason or authority, (specified in the act), shall for the first offence forfeit 100*l.* and for the second offence 200*l.* to the party grieved, and be disabled to hold his office.

That no person, once delivered by habeas corpus, shall be re-committed for the same offence, on penalty of 500*l.*

That every person committing treason or felony shall, if he require it, the first week of the next term, or the first day of the sessions of oyer and terminer, be indicted in that term or session, or else be admitted to bail, unless the king's witnesses cannot be produced at that time; and if acquitted, or if not indicted and tried in the second term or session, he shall be discharged from his imprisonment for such imputed offence: but no person, after the assize shall be open for the county in which he is detained, shall be removed by habeas corpus till after the assizes are ended, but shall be left to the justice of the judges of assize. And, lest this act should be evaded by demanding unreasonable bail or sureties for the prisoner's appearance, the 1 *W. and M. stat. 2. c. 2.* requires that excessive bail shall not be demanded.

That any such prisoner may move for, and obtain, his habeas corpus, as well out of the chancery or exchequer as out of the king's bench or common pleas; and the lord chancellor or judges denying the same, on sight of the warrant, or oath that the same is refused, forfeit severally to the party grieved the sum of 500*l.*

That this writ of habeas corpus shall run into the counties Palatine, cinque ports, and other privileged places, and the island of Jersey, Guernsey, &c.

That no inhabitants of England (except persons contracting, or convicts praying to be transported, or having committed some capital offence in the place to which they are sent) shall be sent prisoners to Scotland, Ireland, Jersey, Guernsey, or any places beyond the seas, within or without the king's dominions, on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved a sum not less than 500*l.* to be recovered with treble costs, shall be disabled to bear any office of trust or profit, shall incur the penalties of *præmunire*, and shall be incapable of the king's pardon.

The writ of habeas corpus being a high prerogative writ, issuing out of the king's bench or common pleas, not only in term but in vacation, by a fiat from the chief justice, or any other judge, and running in all parts of the king's dominions, if issuing in vacation, it is usually returnable before the judge himself who awarded it, and he proceeds by himself thereon, unless the term should intervene, when it may be returned in court.

To obtain this writ, application must be made to the court by motion, as in the case of all other prerogative writs.

This writ may also be obtained to remove every unjust restraint or personal freedom in private life, though imposed by a husband, or a father; but when women or infants are brought up by habeas corpus, the court will set them free from an unmerited or unreason-

able confinement, and will leave them at liberty to choose where they will go.

Thus, the *habeas corpus ad subjiciendum* is that which issues in criminal cases, and is therefore deemed a prerogative writ, which the king may issue to any place, as he has a right to be informed of the state and condition of the prisoner, and for what reason he is confined. And it is therefore also, in regard to the subject, deemed his writ of right, that is, such a one as he is entitled to *ex debito justitiæ*, being in nature of writ of error to examine the legality of the commitment, and commanding the day, the caption, and cause of detention to be returned.

The *habeas corpus ad faciendum et recipiendum* issues only in civil cases, and lies where a person is sued, and in gaol, in some inferior jurisdiction, and is willing to have the cause determined in some superior court, which hath the jurisdiction over the matter; in this case the body is to be removed by *habeas corpus*, but the proceedings must be removed by *certiorari*.

This writ suspends the power of the court below; so that if they proceed after, the proceedings are void, and *coram non judice*.

By this writ the proceedings in the inferior court are at an end, for the person of the defendant being removed to the superior court, they have lost their jurisdiction over him, and all the proceedings in the superior court are *de novo*, and bail *de novo* must be put in, in the superior court.

*Habeas corpus ad respondendum*, is where a man hath a cause of action against one who is confined by the process of some inferior court; in which case this writ is granted to remove the prisoner to answer this new action in the court above.

*Habeas corpus ad deliberandum et recipiendum*, is a writ which lies to remove a person to the proper place or county where he committed some criminal offence.

*Habeas corpus ad satisfaciendum*, lies after a judgment; and on this writ the attorney for the plaintiff must endorse the number roll of the judgment on the back of the writ.

*Habeas corpus* upon a *cepi*, lies where the party is taken in execution in the court below.

*Habeas corpus ad testificandum*, lies to remove a person in confinement, in order to give his testimony in a cause depending.

HANGING. See FELONY.

HAWKERS AND PEDLARS, are such dealers, or itinerary petty chapmen who travel to different fairs or towns with goods or wares, and are placed under the control of commissioners, by whom they are licensed for that purpose, pursuant to stat. 8 and 9 W. 3. c. 25. and 29 Geo. 3. c. 26.

Traders in linen and cotton manufactories sending their goods to markets and fairs, and selling them by wholesale; manufacturers selling their own manufactures, 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.



By the 52 *Geo. 3. c. 108.* no wholesale dealer in lace, woollen, silk, cotton, or mixed goods, or any of the goods, wares, or manufactures of Great Britain, and selling the same by wholesale, shall be deemed a hawker and pedlar: but such persons, their apprentices, servants, or agents, may go from house to house, and from shop to shop, to any of their customers who sell again by wholesale or retail. Nor shall the hawker's and pedlar's duty extend to any person carrying about coals in carts, or on horses, mules, and asses, and selling the same by retail.

**HAY AND STRAW.** See **GRAIN.**

**HEIR**, is he to whom lands, tenements, or hereditaments, by the act of God and right of blood, do descend of some estate of inheritance.

**HEIR APPARENT.** Here we must observe, that no person can be heir until the death of his ancestor; yet in common parlance he who stands nearest in degree of kindred to the ancestor is called, even in his lifetime, heir apparent.

Also the law takes notice of an heir apparent, so far as to allow the father to bring an action of trespass for taking away his son and heir, the father being guardian by nature to his son, where any lands descended to him.

**HEIRESS**, is a female heir to a person having an estate of inheritance of lands. If there be more than one, they are called co-heiresses, or rather, in legal expression, co-heirs. The offence of stealing an heiress is founded on the statute 3 *H. 7. c. 2.* which enacts, that if any man shall, for lucre, take any woman, being maid, widow, or wife, and having substance either in goods or lands, or being heir apparent to her ancestor, contrary to her will, and afterwards she be married to such misdoer, or by his consent to another, or defiled, he, his procurors, and abettors, and such as knowingly receive such woman, shall be deemed principal felons: and by 39 *Eliz. 3.* the benefit of clergy is taken away from principals, procurors, and accessaries before. And it is not material whether a woman so taken, contrary to her will, be at last married or defiled, with her own consent or not, if she were under the force at the time.

**HEMP AND FLAX.** No hemp or flax is to be watered in any river, running water, stream, brook, or pond, where beasts are used to be watered, but only in their several ponds for that purpose, on pain of 20*s.*

Any person may in any place, corporate town, privileged or unprivileged, set up manufactories of hemp or flax; and persons coming from abroad, using the trade of hemp or flax-dressing, and of making thread, weaving cloth made of hemp or flax, or making tapestry hangings, twine or nets for fishery, cordage, &c. after three years shall have the privilege of natural born subjects.

**HEREDITAMENTS**, all such things immoveable, whether corporeal or incorporeal, as a man may leave to him and his heirs, by way of inheritance: or not being otherwise devised, do naturally descend to him who is next heir of blood, and fall not within the

compass of an executor or administrator, as chattels do. It is a word of large extent, and much used in conveyances; for by the grant of hereditaments, isles, seignories, manors, houses, and lands of all sorts, charters, rents, services, advowsons, commons, and whatever may be inherited, will pass.

Hereditaments are of two kinds, corporeal and incorporeal. Corporeal hereditaments consist wholly of substantial and permanent objects, all which may be comprehended under the general denomination of land only; for land comprehends, in its legal signification, any ground, soil, or earth whatsoever, as arable, meadows, pastures, woods, moors, waters, marshes, furzes, and heath.

Incorporeal hereditaments are not the object of sensation, neither can they be seen or handled, are creatures of the mind, and exist only in contemplation: they are principally of ten sorts, viz. advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or presents, and rents.

HERESY, among protestants, is said to be a false opinion, repugnant to some point of doctrine clearly revealed in scripture, and either absolutely essential to the Christian faith, or at least of most high importance.

All old statutes that give a power to arrest or imprison persons for heresy, or introduce any forfeiture on that account, are repealed: yet, by the common law, an obstinate heretic, being excommunicated, is still liable to be imprisoned by force of the writ, *de excommunicatio capiendo*, till he make satisfaction to the church.

And if any person having been educated in, or having made profession of, the Christian religion within this realm, shall be convicted in any of the courts at Westminster, or at the assizes, of denying any of the persons in the holy Trinity to be God, or maintaining that there are more Gods than one, or of denying the truth of the Christian religion, or the divine authority of the holy scriptures, he shall for the first offence be adjudged incapable of any office, and for the second shall be disabled to sue any action, or be guardian, executor, or administrator, or take by any legacy or deed of gift, or to bear any office civil or military, or benefice ecclesiastical, for ever, and shall also suffer imprisonment for three years, without bail or mainprize, from the time of such conviction.

HERIOT, signifies a tribute given to the lord, for his better preparation towards war. And by the laws of Canute it appears, that at the death of the great men of this nation, so many horses and arms were to be paid for as they were in their respective lifetime obliged to keep for the king's service.

A heriot was first paid in arms and horses; it is now, by custom, sometimes the best live beast which the tenant dies possessed of, sometimes the best inanimate good, under which a jewel or piece of plate may be included.

As to the several kinds of heriots, some are due by custom, some



by tenure, and by reservation on deeds executed within time of memory: those due by custom are the most frequent, and arose by the contract or agreement of the lord and tenant, in consideration of some benefit or advantage accruing to the tenant, and for which an heriot, as the best beast, best piece of household furniture, &c. became due, and belonged to the lord either on the death or alienation of the tenant, and which the lord may seize, either within the manor or without, at his election.

It hath been solemnly adjudged, that for an heriot service, or for an heriot reserved by way of tenure, the lord may either seize or distrain; for when the tenant agrees that the lord shall, on his death, have the best beast, &c. the lord hath his election which beast he will take, and by seizing thereof reduces that to his possession, wherein he had a property at the death of the tenant, without the concurring act of any other person; and it is not like the case where the tenant receives 20s. or a robe, for there the lessee has his election which he will pay, and being to do the first act, the lord cannot seize, but must distrain.

If the tenure be by rent and heriot service, viz. to have the best beast after the death of the tenant, and the lord distrain for the heriot, he need not in his avowry shew which was the best beast that he was entitled to, nor of what value it was; for the tenant might have esloined the cattle, and thereby it might have been impossible for the lord to know which was the best beast; and the tenant at his peril is to render the best beast, or sufficient recompence.

Upon the whole, the custom of the manor is the law of it, in all such like cases.

**HERRINGS.** It is unlawful to buy or sell herrings at sea, before the fishermen come into the haven, and the cable of the ship be drawn to the land.

No herrings shall be sold in any vessel but where the barrel contains thirty-two gallons, and half barrel and firkin accordingly; and they must be well packed, of one time's packing and salting, and be as good in the middle as at the ends, on pain of forfeiting 3s. 4d. a barrel.

Vessels for herrings are to be marked with the quantity and place where packed; and packers are to be appointed and sworn in all fishing ports, and under the penalty of 100*l.*

**HIGHWAY**, a public passage for the king's people; whence it is called the king's highway. It seems that anciently there were but four highways in England which were free and common to all the king's subjects, and through which they might pass without any toll, unless there were a particular consideration for it; all others which we have at this day are supposed to have been made through the grounds of private persons, on writs of *ad quod damnum*, which being an injury to the owner of the soil, it is said they may prescribe for toll, without any special consideration.

There are three kinds of ways, a footway, a pack and prime way,

which is both a horse and foot-way, and a cart-way, which contains the other two.

But notwithstanding these distinctions, it seems that any of the said ways which is common to all the king's subjects, whether it lead directly to a market-town, or only from town to town, may properly be called a highway; and that any such cart-way may be called the king's highway; that a river common to all men may also be called a highway; and that nuisances in any of the said ways are punishable by indictment; otherwise they would not be punished at all; for they are not actionable unless they cause a special damage to some particular person; because if such action would lie, a multiplicity of suits would ensue.

But it seems that a way to a parish church, or to the common field of a town, or to a village which terminates there, may be called a private way, because it belongs not to all the king's subjects, but only to the particular inhabitants of such parish, house, or village, each of which, as it seems, may have an action for a nuisance therein.

If passengers have used time out of mind, where the roads are bad, to go by outlets on the land adjoining to a highway in an open field, such outlets are parcels of the highway; and therefore if they be sown with corn, and the track foundrous, the king's subjects may go upon the corn.

Where a private way is spoiled by those who have a right to pass thereon, and not through the default of the owner of the land, it seems that they who have the use and benefit of the way ought to repair it, and not the owner of the soil, unless he be bound thereto by custom or special government.

*Repairing highways.*—It seems agreed that, by the common law, the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are. But it is said that the tenants of the lands adjoining are bound to scour their ditches.

Particular persons may be burdened with the general charge of repairing a highway in two cases: in respect of an inclosure, or by prescription. As where the owner of lands not inclosed, next adjoining to the highway, incloses his lands on both sides thereof; in which case he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because, before the inclosure, when the way was bad, the people, for their better passage, went over the fields adjoining, out of the common track, a liberty which the inclosure has deprived them of.

And particular persons may be bound to repair a highway by prescription; and it is said that a corporation aggregate may be compelled to do it by force of a general prescription, that it ought and has used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for other consideration; because such a corporation, in judgment of law, never dies, and therefore



if it were ever bound to such duty, it must continue to be always so; neither is it any plea, that such a corporation has always done it out of charity, for what it has always done, it shall be presumed to have been always bound to do. But it is said that such a general prescription is not sufficient to charge a private person, because no man is bound to do a thing which his ancestors have done, unless it be for some special reason; as having lands descended to him holden by such service, &c.

It seems certain in all cases, whether a private person be bound to repair an highway by enclosure or prescription, that the parish cannot take the advantage of it on the general issue, but must plead it specially; and that therefore, if to an indictment against the parish for not repairing a highway, they plead not guilty, this shall be intended only that the ways are in repair, but does not go to the right of reparation.

At common law it is said that all the county ought to make good the reparations of an highway, where no particular persons are bound to do it; by reason the whole county have their ease and passage by the said way.

By the ancient common law, villages are to repair their highways, and may be punished for their decay; and if any do injure or straiten the highway, he is punishable in the king's bench, or before the justices of peace, in the court leet, &c.

Destroying any public turnpike-gate, or the rails or fences thereto belonging, subjects the offender to hard labour for three months, and to be publicly whipped.

On conviction at the assizes, the offender may be transported for seven years. And on a second offence, or on demolishing any turnpike-house, he shall be guilty of felony, and transported for seven years. But in both these cases the prosecution must be within six months; and on the convict's returning from transportation, he shall suffer death.

Every justice of the peace, by the statute, upon his own view, or on oath made to him by the surveyor, may make presentment of roads being out of repair; and thereupon like process shall be issued as upon indictment.

**HIGHWAYMEN.** In order to encourage the apprehension of highwaymen, it is enacted by the 4 and 5 *W. and M. c. 8.* that such as apprehend a highwayman, and prosecute him to conviction, shall receive a reward of 40*l.* from the public, to be paid to them (or, if killed in the endeavour to take him, to their executors) by the sheriff of the county; besides the horse, furniture, arms, money, and other goods taken upon the person of such robber; with a reservation of the right of any person from whom the same may have been stolen: to which the statute 8 *G. c. 16.* superadds 10*l.* to be paid by the hundred indemnified by such taking.

**HIGH TREASON.** See **TREASON.**

**HOMICIDE**, properly so called, is the killing of a man by a man. Of this there are several species, as homicide by self-defence,

homicide by misadventure, justifiable homicide, manslaughter, chance medley, and murder.

*Homicide by self-defence.* Homicide *se defendendo*, or in a man's own defence, seems to be, where one has no other possible means of preserving his life from one who combats with him on a sudden quarrel, and kills the person by whom he is reduced to such inevitable necessity.

And not only he who on an assault retreats to a wall, or some such strait, beyond which he can go no farther, before he kills the other is judged by the law to act upon unavoidable necessity; but also he, who being assaulted in such a manner, and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all.

And though a person who retreats from an assault to the wall, should give the other wounds in his retreat, yet if he give him no mortal wound till he get thither, and then kill him, he is guilty of homicide *se defendendo* only.

But if the mortal wound were given first, then it is manslaughter.

Homicide by misadventure, is where a man in doing a lawful act, without any intent of hurt, unfortunately chances to kill another; as where a labourer being at work with an hatchet, the head thereof flies off, and kills one who stands by.

It seems clear, that neither homicide by misadventure, nor homicide *se defendendo*, are felonious, because they are not accompanied with a felonious intent, which is necessary in every felony.

*Justifiable homicide.* To make homicide justifiable, it must be owing to some unavoidable necessity, to which a person who kills another must be reduced, without any manner of fault in himself.

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another, acts in truth upon malice, and takes occasion upon the appearance of necessity to execute his own private revenge, he is guilty of murder.

But if a woman kill him who assaulteth to ravish her, it is no felony: or if a man come to burn my house, and I go out thereof and kill him, it is no felony.

If any evil disposed person, shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time, and shall happen to be slain in such felonious attempt, the slayer shall be discharged, and shall forfeit no lands, nor goods.

*Justifiable homicide of a public nature*, is such as is occasioned by the due execution of advancement of public justice, with regard to which it must be observed.

That the judgment, by virtue whereof any person is put to death, must be given by one who has jurisdiction in the cause; for otherwise both judge and officer may be guilty of felony.

The execution must be pursuant to, and warranted by the judgment, otherwise it is without authority; and consequently, if a sheriff



the sentence to cut off the head, he is guilty of felony.

*Manslaughter.* Homicide against the life of another, is either with or without malice; that which is without malice is called manslaughter, or sometimes chance medley, by which is understood such killing as happens either on a sudden quarrel, or in the commission of any unlawful act, without any deliberate intention of doing any mischief at all.

Hence it follows, that there can be no accessaries to this offence before the fact, because it must be done without premeditation; but there may be accessaries after the fact.

The only difference between murder and manslaughter, is, that murder is upon malice aforethought, and manslaughter upon a sudden occasion, as if two meet together, and striving for the wall, the one kills the other, this is manslaughter and felony. And so it is if they had, on that sudden occasion, gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given.

*Chance or chance medley.* Authors of the first authority disagree about the application of this word: by some it is applied to homicide by misadventure, by others to manslaughter. The original meaning of the word seems to favour the former opinion, as it signifies a sudden or casual meddling or contention; but homicide by misadventure supposes no previous meddling or falling out.

Murder, is the highest crime against the law of nature, that a man is capable of committing.

Murder is when a man of sound memory, and at the age of discretion, unlawfully killeth another person under the king's peace with malice aforethought, either expressed by the party, or implied by the law, so as the party wounded or hurt die of the wound or hurt within a year and a day.

And the whole day on which the hurt was done, shall be reckoned the first.

*By malice expressed,* is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorized.

And the evidence of such malice, must arise from external circumstances discovering that inward intention; as laying in wait, menacings antecedent, former grudges, deliberate compassings, and the like, which are various, according to the variety of circumstances.

*Malice implied,* is where a person voluntary kills another, without any provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind.

In general any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with circumstances which

shew the heart to be perversely wicked, is judged to be of malice prepenſe, as aforethought, and conſequently murder.

If a man kill another, it ſhall be intended *prima facie* that he did it maliciously, unleſs he can make the contrary appear, by ſhewing that he did it on a ſudden provocation or the like.

When the law makes uſe of the term malice aforethought, as deſcriptive of the crime of murder, it muſt not be underſtood in that narrow reſtrained ſenſe, to which the modern uſe of the word malice is apt to lead one, a principle of malevolence to particulars; for the law by the term malice, in this inſtance means, that the fact has been attended with ſuch circumſtances, as are the ordinary ſymptoms of a wicked heart, regardless of ſocial duty, and fatally bent upon miſchief.

The law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds are guilty of murder, whether they fought or not; and it is holden that the ſeconds of the perſon killed, are alſo equally guilty, in reſpect to that countenance which they give to their principals in the execution of their purpoſe, by accompanying them therein, and being ready to bear a part with them.

Alſo it ſeems agreed, that no breach of a man's word or promiſe, no treſpaſs either to land or goods, no affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kill him in purſuance of ſuch aſſault, whether the perſon ſlain did at all fight in his defence or not.

**HORSE-DEALERS.** By 52 G. 3. c. 93. every perſon exerciſing the trade or buſineſs of a horſe-dealer, muſt take out a license from the ſtamp office, for which he ſhall pay annually, if within London, Weſtmiſter, the bills of mortality, the pariſh of St. Pancras, or the borough of Southwark, 25*l.* elſewhere 12*l.* 10*s.*

The commiſſioners are to grant licenses to horſe-dealers for not exceeding one year; and every license ſhall ceaſe on Sept. 29, then in the year for which the ſame ſhall be iſſued and commence from the date; and every license taken out for any year ſubſequent to the year in which the ſame ſhall be iſſued, ſhall commence from Sept. 29 then next enſuing, and continue to Sept. 29 following; and a freſh license is to be taken out ten days at leaſt before the expiration of the year.

One license is ſufficient for partners, and the license is confined to the place mentioned therein.

But no licenses to be granted to horſe-dealers, unleſs they declare they ſeek their living by buying and ſelling horſes, and add the name of the place where the ſaid buſineſs is carried on.

Horſe-dealers ſo licensed, ſhall cauſe the words licensed to deal in horſes, to be painted or written in large and legible characters, either on a ſign hung out, or on ſome viſible place in the front of



their house, gateway, or stables; and if they shall sell any horse, without fixing such token, they shall forfeit 10*l.* to be recovered by action; half to the king, and half to the informer.

Horse-dealers, who shall carry on the said business without having obtained a license under this act, shall be liable to be assessed the duties on riding horses, and shall deliver lists thereof as other persons.

HORSES. It shall be lawful for any person, native, or foreigner, at any time to ship, lade, and transport by way of merchandize, horses into any parts beyond the seas, in amity with his majesty, paying for each horse, mare, or gelding, 2*s.* and no more.

No person convicted for feloniously stealing a horse, mare, or gelding, shall have the privilege of clergy.

And not only all accessories before such felony done, but also all accessories after such felony, shall be deprived and put from all benefit of their clergy, as the principal, by statute heretofore made, is or ought to be.

If a horse be stolen out of the stable, or other curtilage of a dwelling-house, in the night time, it falls under the denomination of burglary; if in the day time, it falls under the denomination of larceny from the house; and in either case there is a reward of 40*l.* for convicting an offender, and the prosecutor is entitled to a certificate, which will exempt him from all parish and ward offices in the parish and ward where the burglary, or larceny is committed, and which may be once assigned over, and will give the same exemption to the assignee, as to the original proprietor.

If an unsound horse be sold at the price of a sound horse, though not absolutely warranted to be sound, the seller sins against the law of morality, and the law of the land; but if he acknowledge him not to be sound, and sell him greatly under the value of a sound horse, as if he dispose of him for 25*l.* when he would have been worth 50*l.* if sound, such sale may be considered as fair and legal.

If a horse which is warranted sound at the time of sale, be proved to have been at that time unsound, it is not necessary that he should be returned to the seller. No length of time elapsed after the sale will alter the nature of a contract originally false. Neither is notice necessary to be given: though the not giving notice will be a strong presumption against the buyer, that the horse at the time of sale had not the defect complained of, and will make the proof on his part much more difficult. The bargain is complete, and if it be fraudulent on the part of the seller, he will be liable to the buyer in damages, without either a return or notice.

If on account of a horse warranted sound, the buyer shall sell him again at a loss, an action might perhaps be maintained against the original seller, to recover the difference of the price.

*Slaughtering horses.* Great abuses having arisen, and many horses having been stolen, from the facility and safety of disposing of them to those who kept slaughter-houses for horses, some regulations and restrictions seemed absolutely necessary. It was no uncommon thing for horses of great value to be sold for the purpose

of making food for dogs; the thief rather choosing to receive 20*s.* for a stolen horse, without fear or danger of detection, than venture to dispose of him publicly, though he might possibly have found a purchaser who would have given as many pounds for him. These considerations induced the legislature to pass the act of 26 *G. 3. c. 71.* for regulating these slaughter-houses.

*Killing or maiming horses.* Where any person shall in the night time, maliciously, unlawfully, and willingly kill, or destroy any horses, sheep, or other cattle of any person, every such offence shall be adjudged felony, and the offender shall suffer as in the case of felony.

Offenders may be transported for seven years, either at the assizes or at the sessions, by three justices of the peace; one to be of the quorum.

By the 9 *G. 1. c. 22.* commonly called the black act, it is enacted, that if any person shall unlawfully and maliciously kill maim, or wound any cattle, every person so offending, being thereof lawfully convicted, in any county of England, shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

But not to work corruption of blood, loss of dower, nor forfeiture of lands or goods.

Prosecution upon this statute, shall or may be commenced, within three years from the time of the offence committed, but not after.

If a horse, or other goods, be delivered to an inn-keeper or his servants, he is bound to keep them safely, and restore them when his guest leaves the house.

If a horse be delivered to an agisting farmer, for the purpose of depasturing in his meadows, he is answerable for the loss of the horse, if it be occasioned by the ordinary neglect of himself or his servants.

If a man ride to an inn, where his horse has eat, the host may detain the horse, till he be satisfied for the eating, and without making any demand.

But a horse committed to an inn-keeper, can only be detained for his own meat, and not for that of his guest, or any other horse; for the chattels in such case, are only in the custody of the law for the debt which arises from the thing itself, and not for any other debt due from the same party.

By the custom of London and Exeter, if a man commit a horse to an inn-keeper, if he eat out his price, the inn-keeper may take him as his own, upon the reasonable appraisement of four of his neighbours; which was it seems a custom, arising from the abundance of traffic with strangers, that could not be known so as to be charged with an action.

But it hath been holden though an inn-keeper in London, may, after long keeping, have the horse appraised and sell him, yet, when he has in such case had him appraised, he cannot justify the taking him to himself, at the price he was appraised at.

**HORSE-RACES.** By the 13 *G. 2. c. 19.* which was passed for



the salutary purpose of preventing the multiplicity of horse-races, and consequently of checking gaming, it is enacted, that no plates or matches under 50*l.* value shall be run, upon penalty of 200*l.* to be paid by the owner of each horse running, and 100*l.* by such as advertise the plate. At Newmarket and Black Hambleton, however, a race may be run for any sum or stake less than 50*l.* But though such horse-races are lawful, yet it has been determined, that they are games within the statute 9 *Anne*, c. 14. and that of consequence, wagers above 10*l.* upon a lawful horse-race, are illegal.

HOUSEBREAKING. See BURGLARY.

HOUSE. Every man's house is as his castle, as well to defend him against injuries as for his repose.

Upon recovery in any real action or ejection, the sheriff may break the house and deliver seisin, &c. to the plaintiff, the writ being *habere facias seisinam*, or *possessionem*; and after judgment it is not the house of the defendant in right and judgment of the law.

In all cases where the king is a party, the sheriff, if no door be open, may break the parties' house to take him, or to execute other process of the king, if he cannot otherwise enter; but he ought first to signify the cause of his coming, and request the door to be opened; and this appears by the statute Westm. 1, 17. which is only in affirmance of the common law; and without default in the owner, the law will not suffer a house to be broken.

In all cases where the door is open, the sheriff may enter and make execution at the suit of any subject, either of body or goods; but otherwise where the door is shut, there he cannot break it to execute process at the suit of a subject.

Though a house be a castle for the owner himself and his family, and his own goods, &c. yet it is no protection for a stranger flying thither, or the goods of such a one, to prevent lawful execution; and therefore in such case, after request to enter, and denial, the sheriff may break the house.

If a person authorized to arrest another who is sheltered in a house, be denied quietly to enter into it, in order to take him, it seems generally to be agreed, that he may justify the breaking open the doors upon a *capias* from the king's bench or chancery, to compel a man to find sureties for the peace for such purpose.

So where one known to have committed treason, is pursued either with or without a warrant, by a constable or private person.

So where an affray is made in a house in the view of hearing of a constable; or where those who have made an affray in his presence fly to a house, and are immediately pursued by him, and he is not suffered to enter in order to suppress the affray, in the first case, or to apprehend the affrayers in either case.

A man ought so to use his house, as not to damnify his neighbour; and a man may compel another to repair his house, in several cases by the writ *de domo reparanda*.

If a man build his house so close to mine, that his roof overhangs

my roof, and throws the water of his roof upon mine, this is a nuisance for which an action will lie.

But depriving one of a mere matter of pleasure, as a fine prospect, by building a wall or the like; this, as it abridges nothing really convenient or necessary, is no injury to the sufferer, and therefore not an actionable nuisance.

HUNTING. See DOGS AND GAME.

HUSBAND AND WIFE, usually termed baron and feme, are one person in law: that is, the very being or legal existence of the woman, is suspended during the marriage; or at least is incorporated and consolidated into that of the husband, under whose wing, protection, and cover, she performs every thing: she is therefore called in our law French, *feme covert*, that is, under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her *coverture*,

A man cannot grant lands to his wife during the *coverture*, nor any estate or interest to her, nor enter into covenant with her. But he may by his deed covenant with others for her use, as for her jointure, or the like; and he may give to her by devise or will, because the devise or will, doth not take effect till after his death.

All deeds executed by the wife, and acts done by her during her *coverture*, are void; except it be a fine, or the like matter of record, in which case she must be solely and secretly examined, that it may be known whether or no her act be voluntary.

A wife is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft in company with, or by coercion of her husband.

But if she commit a theft of her own voluntary act, or by the bare command of her husband, or be guilty of treason, murder, or robbery, in company with, or by coercion of her husband, she is punishable as much as if she were sole; because of the odiousness and dangerous consequence of these crimes.

By marriage, the husband hath power over his wife's person; and the courts of law still permit an husband to restrain a wife of her liberty, in case of any gross misbehaviour. But if he threaten to kill her, &c. she may make him find surety of the peace, by suing a writ of *supplicavit* out of chancery, or by preferring articles of the peace against him, in the court of king's bench, or she may apply to the spiritual court for a divorce *propter savitatem*.

The husband by marriage obtains a freehold in right of his wife, if he takes a woman to wife that is seised of a freehold; and he may make a lease thereof for twenty-one years or three lives, if it be made according to the statute.

The husband also gains a chattel real, as a term for years, to dispose of if he please, by grant or lease in her life time, or by surviving her: otherwise it remains with the wife. And upon execution for the husband's debt, the sheriff may sell the term during the life of the wife.

The husband also by the marriage, hath an absolute gift of all



chattels personal in possession of the wife in her own right, whether he survives her or not. But if these chattels personal are *choses in action*; that is, things to be sued for by action, as debts by obligation, contract or the like, the husband shall not have them, unless he and his wife recover them.

By custom in London, a wife may carry on a separate trade; and as such, is liable to the statutes of bankruptcy, with respect to the goods in such separate trade, with which the husband cannot intermeddle.

If the wife be indebted before marriage, the husband is bound afterwards to pay the debt, living the wife; for he has adopted her and her circumstances together.

But if the wife die, the husband shall not be charged for the debt of his wife after her death; if the creditor of the wife do not get judgment during the coverture.

The husband is bound to provide his wife necessaries; and if she contract for them, he is obliged to pay for the same; but for any thing besides necessaries he is not chargeable.

And also if a wife elope, and live with another man, the husband is not chargeable even for necessaries; at least if the person who furnish them be sufficiently apprized of her elopement.

A man having issue by his wife born alive, shall be tenant by the courtesy of all the lands in fee simple, or fee tail general, of which she shall die seised.

And after her death, he shall have all chattels real; as the term of the wife, or a lease for years of the wife, and all other chattels in possession, and also, all such as are of a mixed nature (partly in possession and partly in action), as rents in arrear, incurred before the marriage or after: but things merely in action, as of a bond or obligation to the wife, he can only claim them as administrator to his wife, if he survive her.

If the wife survive the husband, she shall have for her dower, the third part of all his freehold lands: so she shall have her term for years again, if he have not altered the property during his life: so also she shall have again all other chattels real and mixed: and so things in action, as debts, shall remain to her, if they were not received during the marriage.

But if she elope from her husband, and go away with her adulterer, she shall lose her dower; unless her husband had willingly, without coercion ecclesiastical, been reconciled to her, and permitted her to cohabit with him.

**IDEOTS.** An ideot is a fool or a madman from his nativity, and one who never has any lucid intervals; therefore the king has the protection of him and his estate, during his life, without rendering any account; because it cannot be presumed that he will ever be capable of taking care of himself or his affairs.

By the old common law, there is a writ *de ideota inquirendo*, directed to the sheriff, to inquire by a jury, whether the party be an ideot or not; and if they find him a perfect ideot, the profits of his lands and the custody of his person, belong to the king accord-

ing to the stat. 17 Ed. 2. c. 9. by which it is enacted, that the king shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them necessaries of whose fee soever the land shall be holden. And after the death of such ideots, he shall render it to the right heir, so that such ideots shall not aliene, nor their heirs be disinherited. But it seldom happens, that a jury finds a man an ideot from his nativity; but only *non compos mentis* from some particular time; which has an operation very different in point of law: for in this case he comes under the denomination of a lunatic; in which respect, the king shall not have the profits of his lands, but is accountable for the same to the lunatic when he comes to his right mind, or otherwise to his executors or administrators.

It seems to be agreed at this day, that the king as *parens patriæ*, hath the protection of all his subjects; and that in a more peculiar manner he is to take care of all those, who by reason of their imbecility and want of understanding, are incapable of taking care of themselves.

But though a lunatic is by commission to be under the care of the public, and such committee is to be appointed for him by the lord chancellor, whose acts are subjected to the correction and control of the court of chancery; yet such a one, whether so appointed, or whether he of his own head take upon him the care and management of the estate of a lunatic, is but in nature of a bailiff or trustee for him, and accountable, to him, his executors, or administrators.

And as the committees of a lunatic have no interest, but an estate during pleasure, it has been ruled, that they cannot make leases, nor any way incur the lunatic's estate, without a special order from the court of chancery, where the profits are not sufficient to maintain the lunatic.

In case of a lunatic's recovery, he must petition the chancellor to supersede the commission; upon the hearing of which, the lunatic must attend in person, that he may be inspected by the chancellor; it is also usual for the physician to attend, and to make an affidavit that the lunatic is perfectly recovered.

An ideot, or a person *non compos*, may inherit, because the law, in compassion to their natural infirmities, presumes them capable of property.

Also an ideot or person of non sane memory, may purchase, because it is intended for their benefit; and if after recovery of their memory they agree thereto, they cannot avoid; but if they die during their lunacy, their heirs may avoid it, for they shall not be subject to the contracts of persons who want capacity to contract; so if after their memory recovered, the lunatic, or person *non compos*, die without agreement to the purchase, their heirs may avoid it.

If an ideot or lunatic marry, and die, his wife shall be endowed; for this works no forfeiture, and the king has only custody of the inheritance in one case, and the power of providing for him and his family in the other; but in both cases the freehold and inherit-



ance is in the ideot or lunatic ; and therefore if lands descend to an ideot or lunatic after marriage, and the king, on office found, takes those lands into his custody, or grants them over to another as committee in the usual manner ; yet this seems no reason why the husband should not be tenant by the courtesy, or the wife endowed, since their title does not begin to any purpose till the death of the husband or wife, when the king's title is at an end.

But by the 51 G. 3. c. 37. if lunatics marry before they are pronounced to be of sane mind by the lord chancellor or law keepers of the great seal, or by the majority of their respective trustees, such marriages are null and void.

It is laid down as a general rule, that ideots and lunatics, being by reason of their natural disabilities incapable of judging between good and evil, are punishable by no criminal prosecution whatsoever.

And therefore a person who loses his memory by sickness, infirmity, or accident, and kills himself, is no *felo de se*.

And as a person *non compos* cannot be a *felo de se* by killing himself, so neither can he be guilty of homicide in killing another, nor of petit treason ; also if one committed for a capital offence become *non compos* before conviction, he shall not be arraigned ; and if after conviction, he shall not be executed.

We must distinguish between acts done by ideots and lunatics *in pais*, and in a court of record ; that as to those solemnly acknowledged in a court of record, as fines and recoveries, and the uses declared on them, they are good, and can neither be avoided by themselves, nor their representatives, for it is to be presumed, that had they been under these disabilities, the judges would not have admitted them to make those acknowledgments.

Therefore if a person *non compos* acknowledge a fine, it shall stand against him and his heirs ; for though the judge ought not to admit of a fine from a madman under that disability, yet when it is once received, it shall never be reversed, because the record and judgment of the court being the highest evidence that can be, the law presumes the conusor at that time capable of contracting ; and therefore the credit of it is not to be contested, nor the record avoided by any averment against the truth of it.

As to acts done by them *in pais*, they are distinguished into void and voidable, though as to themselves they are regularly unavoidable, because no man is allowed to disable himself, for the insecurity that may arise in contracts from counterfeited madness and folly ; besides, if the excuse were real, it would be repugnant that the party should know or remember what he did ; but their heirs and executors may avoid such acts *in pais*, by pleading the disability ; because if they can prove it, it must be presumed real, since no body can be thought to counterfeit it, when he can expect no benefit from it himself.

There are frequent instances in equity, where not only ideots and lunatics, who come within the protection of the law, but also persons of weak understandings, have been relieved, when they appeared to have been imposed upon in their dealings, and unrea-

sonable purchases, and securities obtained from them, set aside in their favour.

Ideots and lunatics, during their lunacy, are incapable of making any will or testament; as are also persons grown childish by reason of extreme old age; so one actually drunk, if he be so drunk as to have lost the use of his reason: but though a person who wants understanding cannot make a will, yet the rule herein is not to be taken from his not being able to measure an ell of cloth, tell twenty, or the like, but whether he have sense enough to dispose of his estate with understanding.

When an idiot sues or defends, he shall not appear by guardian, *prochein amy*, or attorney, but he must be ever in proper person.

But otherwise of him who becomes *non compos mentis*; for he shall appear by guardian if within age, or by attorney if of full age.

By the 51st *Geo. 3. c. 70.* for the better care and maintenance of lunatics, being paupers or criminals, in England, it is enacted that whenever application shall be made by the overseers of any parish of any county in which any lunatic asylum is erected, for a warrant for the conveyance of any lunatic, the justice may refuse it, stating his reasons, and all persons aggrieved may appeal to the quarter sessions. Justices are required to make returns to the quarter sessions of the cases brought before them: and overseers are to produce certificate from a medical person of the state of the lunatic. The medical superintendant of every asylum must make returns of the state of persons intrusted to his care. The expenses of removal of a pauper shall be paid by the parish in which the pauper shall be legally settled. Bastards of lunatics have the legal settlement of the mother.

IGNORANCE, which is want of knowledge of the law, shall not excuse any man from the penalty of it: and 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, where a man offering that he hath done all that in him lies, will not excuse him.

But though ignorance of the law excuseth not, ignorance of the fact doth; as if a person buy a horse or other thing in open market, of one that had no property therein, and not knowing but he had right; in that case he hath good title, and the ignorance shall excuse him. But if the party bought the horse out of the market, or the seller had no right, the buying in open market would not have excused.

IMPARLANCE, is a petition in court, for 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, which is generally till the next term.

Formerly the defendant, in all cases, had an imparlance to the term next after the return of the process, except the proceedings were by original, or for or against attornies or other privileged persons, or against prisoners in the custody of the marshal; in



which cases the defendant was bound to plead without any imparlance, and the same term the declaration was delivered, (if delivered four days before the end of the term,) and except the proceedings were by habeas corpus, or the process were returnable the first return of Easter or Michaelmas term, and the action laid in London or Middlesex; and in which last cases, if the declaration were delivered before the essoin day of *Cras. Ani*, the defendant was to plead two days before the subsequent term.

But now, by a rule made in Trinity term, 5 and 6 *Geo. c. 2.* upon all process to be sued out of this court, returnable the first or second return of any term, if the plaintiff declare in London or Middlesex, and the defendant live within twenty miles of London, the declaration shall be delivered with notice to plead within eight days after the delivery, and the defendant shall plead within the said eight days, without any imparlance; and in default of pleading in either of these cases, judgment may be entered. In both these cases the declaration must be delivered at least four days before the end of the term, exclusive of the day of delivery, otherwise the defendant will be entitled to an imparlance.

The defendant may imparl if he amend his declaration; otherwise, if he accept of costs; for by such amendment it shall be accounted as a new declaration; but if the defendant accept of costs for such amendment, it is intended that he is satisfied for what he is prejudiced by the amendment, and therefore it is reason he should plead to the declaration so amended, and not imparl.

**IMPEACHMENT**, is the accusation and prosecution of a person in parliament, for treason, or other crime and misdemeanor. An impeachment before the lords by the commons of Great Britain, is a presentment to the most high and supreme court of criminal jurisdiction, by the most solemn grand inquest of the whole kingdom. A commoner cannot be impeached before the lords for any capital offence, but only for high misdemeanors; but a peer may be impeached for any crime. The articles of impeachment are a kind of bills of indictment found by the house of commons, and afterwards tried by the lords, who are, in cases of misdemeanors, considered not only as their own peers, but as the peers of the whole nation. By stat. 12 and 13 *H. c. 2.* no pardon under the great seal shall be pleadable to an impeachment by the commons in parliament.

**IMPOSTURE.** See **SWINDLING.**

**IMPRESSING MEN.** The power of impressing seamen for the sea service, by the king's commission, has been a matter of some dispute, and submitted to with great reluctance, though it hath very clearly and learnedly been shewn by Sir Michael Forster, that the practice of impressing, and granting power to the admiralty for that purpose, is of a very ancient date, and hath been uniformly continued, by a regular series of precedents, to the present time, whence he concludes it to be part of the common law. The difficulty arises from hence, that no statute has expressly de-

clared this power to be in the crown, though many of them very strongly imply it. The stat. 2 R. 2. c. 4. speaks of mariners being arrested and retained for the king's service, as of a thing well known, and practised without dispute, and provides a remedy against running away.

By stat. 2 and 3 P. and M. c. 16. if any waterman who uses the river Thames shall hide himself during the execution of any commission for pressing for the king's service, he is liable to heavy penalties.

By stat. 5 Eliz. c. 6. no fisherman shall be taken by the queen's commission to serve as a mariner; but the commission shall be first brought to two justices of the peace, inhabiting near the sea coast where the mariners are to be taken, to the intent that the justices may choose out, and return such a number of able bodied men as in the commission are contained to serve her majesty.

And by stat. 7 and 8 W. c. 21. 2 Anne, c. 6. 4 and 5 Anne, c. 19. 13 Geo. 2. c. 17. especial protections are allowed to seamen in particular circumstances, to prevent them from being impressed. All which do most evidently imply a power of impressing to reside some where; and if any where, it must, from the spirit of our constitution, as well as from the frequent mention of the king's commission, reside in the crown alone.

**INCLOSURES.** Any person who shall wilfully or maliciously demolish, pull down, or otherwise destroy or damage, any fence raised or made for dividing or inclosing any common, waste, or other lands, in pursuance of any act of parliament, or shall cause or procure the same to be done, shall be guilty of felony, and transported for seven years. Prosecution to be commenced in eighteen months after the offence committed.

*Inclosures.* By 41 Geo. 3. (u. k.) c. 119. no person shall act as a commissioner under any future inclosure act (except by signing notice of the first meeting, and administering the oath), until he shall have taken an oath to act without favour or affection; and the oaths and appointment of new commissioners shall be enrolled with the award, and a copy shall be evidence.

Commissioners declining to act shall give notice to the others, and no commissioner shall purchase lands within the parish where inclosures are made, for five years after their award.

Commissioners shall inquire into the boundaries of parishes, and if not sufficiently ascertained, they shall fix them, giving previous notice of their intention so to do; and the commissioners shall cause a description of the boundaries to be delivered to the churchwardens and overseers of the respective parishes; and lords of manors, and persons dissatisfied, may appeal to the quarter sessions, whose decision shall be final.

A survey, admeasurement, plan, and valuation of the lands to be inclosed, shall be made, and kept by the commissioners, which shall be verified by the persons making them; and proprietors may inspect admeasurements and plans, and take copies. And until the division shall be completed, the lands may be entered



by the commissioners, or any persons they may appoint, to make surveys; but maps made at the time of passing the acts may be used, without making new ones, if the commissioners shall think fit.

Claimants of common, in lands to be inclosed, shall deliver to the commissioners schedules of the particulars, or shall be excluded, which claims may be inspected and copies taken; and objections to claims shall be delivered at or before the meeting appointed for that purpose, or shall not be received, except for special cause.

Commissioners are not hereby authorized to determine disputes touching title to lands; but shall assign the allotments to the persons in actual seizin or possession, and disputes as to the title shall not delay inclosures.

The commissioners, before making any allotments, shall appoint public carriage roads, and prepare a map thereof, to be deposited with their clerk, and give notice thereof, and appoint a meeting, at which, if any person shall object, the commissioners, with a justice of the division, shall determine the matter: and where commissioners may be empowered to stop up any old road, it shall not be done without the order of two justices, subject to appeal to quarter sessions.

Carriage roads shall be fenced on both sides, according to the direction of the commissioners; and no person shall erect any gate across any road, or plant any trees on the sides, at less than fifty yards distance. And such commissioners shall appoint surveyors, whose salary, and the expense of making the road, (above the statute duty,) shall be raised as other expenses, and paid before the execution of the award.

The surveyors shall be subject to the control of the justices, and shall account to them for monies received. Justices may levy rates. Surveyors neglecting to complete the roads within a limited time shall forfeit 20*l.* and the inhabitants shall not be chargeable (except to statute duty) until the roads are declared to be completed at a special sessions.

The commissioners shall appoint private roads, footways, ditches, drains, watering-places, quarries, bridge-gates, fences, and marks. The grass and herbage on roads shall belong to the proprietors of lands adjoining; and all roads which shall not be set out shall be allotted and inclosed; but no turnpike-road shall be altered without the consent of the trustees.

Commissioners in making allotments shall have due regard to the situation of the houses, as well as the quantity and quality of land. Commissioners may direct small allotments to be laid together, and ring-fenced, and stocked, and depastured in common by the proprietors. Allotments shall be in full compensation for all rights in the lands, which shall cease on notice from the commissioners, affixed on the church door.

Commissioners may exchange allotments, messuages, lands, and

the like, with the consent of the proprietors, or if belonging to churches, with the consent of the bishop and of the patron. And also make allotments in severalty to joint tenants, or tenants in common.

Persons shall accept their allotments within two calendar months after the award, or forfeit their right. Guardians, trustees, and committees, may accept for incapacitated persons, and tenants for life shall accept of allotments. And their non-acceptance shall not prejudice the right of the *cestui que* trusts, who shall accept within twelve months after their inability is removed.

Before execution of the award, allotments may be ditched and inclosed, with the consent of the commissioners. Timber and other trees and bushes shall be allotted with the lands whereon they stand, the parties paying to the owners such sums as the commissioners shall direct; but in case of neglect, the owners may cut them down, and take them away.

Where money is to be paid for lands, and which ought to be laid out in other purchases, to be settled to the same uses, the commissioners may thereout defray a proportion of the expense of passing the act, and putting it in execution; and if the surplus amounts to 200*l.* it shall, as soon as may be, be laid out in other purchases, and in the mean time be paid into the Bank, and applied under the direction of the court of chancery.

If such money be less than 200*l.* and upwards of 20*l.* it shall, at the option of the person entitled to the rents, be paid into the Bank, or to two trustees, to be approved of by the commissioners, for the same purposes.

If less than 20*l.* it shall be applied to the use of the persons entitled to the rents of the lands. If any person does not accept, inclose, and fence in his allotment as the commissioners shall direct, they may cause it to be inclosed and fenced, and let and receive the rents until the expenses are satisfied, or they may charge them upon the proprietor.

During seven years after fencing the allotments, the fences may be erected on the outside of the ditches, and the materials carried away by the proprietors. No standing fences or hedges shall be destroyed till the execution of the award, without the consent of commissioners; and if assigned as a boundary fence, shall be left uncut, the persons entitled to the allotments making compensation thereof.

Where the boundary of any common fields shall be fenced by any mound, the proprietors of adjoining allotments shall not be compelled to fence them, but such boundaries shall be maintained by the proprietors as before, or as the commissioners may appoint.

Persons destroying fences put up under the authority of any act, shall forfeit 5*l.* and the proprietor or occupier of the lands may give evidence.

When the expenses of obtaining and carrying any act into exe-



cation shall be paid by the proprietors, the commissioners may, on neglect, cause the same to be levied by distress, or may take possession of the allotments, and receive the rents till satisfied.

Guardians, trustees, committees, and tenants for life, or in tail, may charge allotments with expenses, if not exceeding 5*l.* per acre, and if persons in possession shall advance the money, the commissioners may mortgage the lands to them for reimbursement.

The commissioners may deduct from allotments for charity or school lands what shall be deemed equal to the proportionable share of the expenses, and allot the same to persons undertaking to pay.

When the expenses of obtaining and carrying any act into execution shall be to be paid by sale of part of the lands, the commissioners shall set out and sell a part, and the purchasers shall immediately make a deposit, which shall be forfeited if the purchase-money be not duly paid.

Commissioners may summon witnesses, and if they neglect to attend, or refuse to be examined, they are to forfeit not more than 10*l.* nor less than 5*l.*; but no witness shall be obliged to travel above eight miles. After allotment, the commissioners shall draw up their award, which shall be read and executed at a meeting of the proprietors, and proclaimed the next Sunday, in the church, and then considered as complete.

The award shall be in one of the courts at Westminster, or with the clerk of the peace of the county, and may be inspected, and copies obtained—the award and copies shall be legal evidence, and the award binding on all parties interested—and the commissioners may annex maps to the award, which shall be deemed part thereof.

The commissioners shall keep accounts of all monies, which may be inspected at their clerk's office gratis, on pain of his forfeiting not more than 10*l.* nor less than 5*l.*

Monies raised shall be deposited as directed by a majority, in value, of the proprietors, and not issued without an order from the commissioners.

The rector or vicar, with the consent of the bishop of the diocese, and of the patron of the living, may lease allotments for twenty-one years, at a rack rent.

Penalties are recoverable before one justice, by distress, and are to be applied according to the directions of the commissioners.

The rights of lords of manors, the king, and others, except so far as they are affected hereby, are saved.

Two justices may take affidavits of the notices required having been given. Persons taking false oaths to be deemed guilty of perjury. And the act is binding in all cases, except where other provisions are made.

INCORPORATION, power of. To the erection of any corporation, the king's consent is necessary, either implied or expressly given; the king's implied consent, is to be found in corporations which exist by force of the common law, to which our former kings

are supposed to have given their concurrence; of this sort are all bishops, parsons, vicars, churchwardens, and some others, who by common law have ever been held to have been corporations by virtue of their office.

Another method of implied consent, is with regard to all corporations by prescription; such as the city of London, and many others, which have existed as corporations for time immemorial; for though the members thereof can shew no legal charter of incorporation, yet in cases of such high antiquity, the law presumes there once was one, and that by variety of accidents, which a length of time may produce, the charter is lost or destroyed. The methods by which the king's consent is expressly given, are either by act of parliament or charter; but the immediate creative act is usually performed by the king alone, in virtue of his royal prerogative.

INDICTMENT, is a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented on oath by, a grand jury.

An indictment may be found on the oath of one witness only, unless it be for high treason, which requires two witnesses. And unless in any instance it is otherwise specially directed by acts of parliament.

The sheriff of every county is bound to return to every session of the peace, and every commission of oyer and terminer, and of general gaol delivery, twenty-four good and lawful men of the county, some out of every hundred, to inquire, present, do, and execute all those things which, on the part of our lord the king, shall then and there be commanded therein. As many as appear upon this panel are sworn of the grand jury, to the amount of twelve, at the least, and not more than twenty-three, that twelve may be a majority. This grand jury is previously instructed in the articles of their inquiry, by a charge from the judge on the bench. They then withdraw from court, to sit and receive indictments, which are preferred to them in the name of the king, but at the suit of any private prosecutor; and they are only to hear evidence on behalf of the prosecution: for the finding an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire, upon their oaths, whether there be sufficient cause to call upon the party to answer it.

It seems generally agreed, that the grand jury may not find part of an indictment true, and part false; but either find a true bill, or *ignoramus*, for the whole; and if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

All capital crimes whatsoever, and all kinds of inferior crimes which are of a public nature, as misprisions, contempts, disturbances of the peace, oppressions, and all other misdemeanors whatsoever of a public evil example, against the common law, may be



indicted, but no injuries of a private nature, unless they in some degree concern the king.

And generally where a statute prohibits a matter of public grievance to the liberties and security of a subject, or commands a matter of public convenience, as the repairing of the common streets of the town, every disobedience of such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for contempt of the statute, unless such method of proceeding shall manifestly appear to be excluded by it. Yet if the party offending have been fined in an action brought by the party (as it is said he may in every action for doing a thing prohibited by statute), such fine is a good bar to the indictment, because by the fine the end of the statute is satisfied; otherwise he would be liable to a second fine for the same offence.

If several offenders commit the same offence, though in law they are several offences in relation to the several offenders, yet they may be joined in one indictment; as if several commit a robbery, or burglary, or murder.

No indictment for high treason, or misprision thereof, (except indictments for counterfeiting the king's coin, seal, sign, or signet,) nor any process or return thereupon, shall be quashed for mis-reciting, mis-spelling, false or improper Latin, unless exception concerning the same be taken and made in the respective court where the trial shall be, by the prisoner or his counsel assigned, before any evidence given in open court on such indictment; nor shall any such mis-reciting, mis-spelling, false or improper Latin, after conviction on such indictment, be any cause or stay, or arrest of judgment; but nevertheless any judgment on such indictment shall be liable to be reversed on writ of error, as formerly.

An indictment accusing a man in general terms, without ascertaining the particular fact laid to his charge, is insufficient; for no one can know what defence to make to a charge which is uncertain, nor can plead it in bar or abatement of a subsequent prosecution; neither can it appear that the facts given in evidence against a defendant on such a general accusation are the same of which the indictors have accused him: nor can it judiciously appear to the court what punishment is proper for an offence so loosely expressed.

It is therefore best to lay all the facts in the indictment as near to the truth as possible; and not to say, in an indictment for a small assault, (for instance,) wherein the person assaulted received little or no bodily hurt, that such a one, with swords, staves, and pistols, beat, bruised, and wounded him, so that his life was greatly despaired of; nor to say in an indictment for a highway being obstructed, that the king's subjects cannot go thereon, without manifest danger of their lives, and the like; which kind of words not being necessary, may stagger an honest man, upon his oath, to find the fact as so laid.

No indictment can be good, without expressly shewing some

place wherein the offence was committed, which must appear to have been within jurisdiction of the court.

There are several emphatical words of art, which the law has appropriated for the description of an offence, which no circumlocution will supply; as feloniously, in the indictment of any felony; burglariously in an indictment of burglary, and the like.

An indictment on the black act, for shooting at any person, must charge that the offence was done wilfully and maliciously.

By 10 and 11 *W. c.* 23. it is enacted, that no clerk of assize, clerk of the peace, or other person, shall take any money of any person bound over to give evidence against a traitor or felon for the discharge of his recognizance, nor take more than 2*s.* for drawing any bill of indictment against any such felon, on pain of 5*l.* to the party grieved, with full costs. And if he shall draw a defective bill, he shall draw a new one gratis, on the like penalty.

With respect to drawing indictments for other misdemeanors, not being treason or felony, no fee is limited by the statute, the same therefore depends on the custom and ancient usage.

Every person charged with any felony, or other crime, who shall on his trial be acquitted, or against whom no indictment shall be found by the grand jury, or who shall be discharged by proclamation for want of prosecution, shall be immediately set at large in open court, without payment of any fee to the sheriff or gaoler: but in lieu thereof, the treasurer, on a certificate signed by one of the judges or justices before whom such prisoner shall have been discharged, shall pay out of the general rate of the county or district such sum as has been usually paid, not exceeding 13*s.* 4*d.*

But an action cannot be brought by the person acquitted against the prosecutor of the indictment, without obtaining a copy of the record of his indictment, and acquittal; which in prosecutions for felony it is not usual to grant, if there be the least probable cause to found such prosecution upon. For it would be a very great discouragement to the public justice of the kingdom, if prosecutors, who had a tolerable ground of suspicion, were liable to be sued at law whenever their indictments miscarried. But an action on the case for a malicious prosecution may be founded on such an indictment whereon no acquittal can be, as if it be rejected by the grand jury, or be *coram non iudice*, or be insufficiently drawn; for it is not the danger of the plaintiff, but the scandal, vexation, and expense, upon which this action is founded. However, any probable cause for preferring it is sufficient to justify the defendant, provided it do not appear that the prosecution was malicious.

INDORSEMENT, signifies any thing written upon the back of a deed, or other instrument.

On sealing a bond, the condition of the bond may be indorsed, and then the bond and indorsement shall both stand together.

In order to the executing a justice of the peace's warrant in another county, it must be indorsed by some justice in such other county, which is commonly called backing the warrant.

It is customary also to indorse the receipt of the consideration



money upon a deed; or an assignment of a lease may sometimes be made by indorsement.

Indorsement, is also that act by which the holder of a bill of exchange, or promissory note payable to order, transfers such instrument, and his interest therein, to some other person, who is then termed the indorsee, and who, by such transfer and assignment, renders himself responsible for presenting such instruments, and using all due diligence to obtain payment of the acceptor or maker.

INDUCTION, is the giving a clerk instituted to a benefice the actual possession of the temporalities thereof, in the nature of livery of seisin. It is performed by a mandate from the bishop to the archdeacon, who commonly issues out a precept to some other clergyman to perform it for them. Which being done, the clergyman who inducts him indorses a certificate of his induction on the archdeacon's mandate, and they who were present testify the same under their hands. And by this the person inducted is in full and complete possession of all the temporalities of his church.

INFANT, is one under age: from the observations daily made on the actions of infants, as to their arriving at discretion, the laws and customs of every country have fixed upon particular periods on which they are presumed capable of acting with reason and discretion: in our law, the full age of man or woman is twenty-one years.

The ages of male and female are different for different purposes: a male at twelve years of age may take the oath of allegiance; at fourteen is of years of discretion, and therefore may consent or disagree to marriage, may choose his guardian, and if his discretion be actually proved, may make his testament of his personal estate; at seventeen may be a procurator or an executor; and at twenty-one is at his own disposal, and may alien his lands, goods, and chattels. A female at seven years of age may be betrothed or given in marriage; at nine is entitled to dower; and at twelve is of years of maturity, and therefore may consent or disagree to marriage, and if proved to have sufficient discretion, may bequeath her personal estate; at fourteen is at years of legal discretion, and may choose a guardian; at seventeen may be executrix; and at twenty-one may dispose of herself and her lands.

An infant is capable of inheriting, for the law presumes him capable of property; also an infant may purchase, because it is intended for his benefit, and the freehold is in him till he disagree thereto, because an agreement is presumed, it being for his benefit, and because the freehold cannot be in the grantor contrary to his own act, nor can be in abeyance, for then a stranger would not know against whom to demand his right; and if at his full age the infant agree to the purchase, he cannot afterwards avoid it; but if he die during his minority, his heirs may avoid it; for they shall not be bound by the contracts of a person who wanted capacity to contract.

As to infants being witnesses, there seems to be no fixed time at which children are excluded from giving evidence: but it will depend in a great measure on the sense and understanding of the children, as shall appear on examination in court.

And where they are admitted, concurrent testimony seems peculiarly desirable.

An infant is not bound by his contract to deliver a thing, so if one deliver goods to an infant upon a contract, &c. knowing him to be an infant, he shall not be chargeable in trover and conversion or any other action for them; for the infant is not capable of any contract but for necessaries, therefore such delivery is a gift to the infant; but if an infant without any contract, wilfully take away the goods of another, trover lies against him; also it is said, that if he take the goods under pretence that he is of full age, trover lies, because it is a wilful and fraudulent trespass.

Infants are disabled to contract for any thing but necessaries for their person, suitable to their degree and quality, and what is necessary must be left to the jury.

An infant knowing of a fraud, shall be as much bound as if of age.

But it is held that this rule is confined to such acts only as are voidable, and that a warrant of attorney given by an infant being absolutely void, the court will not confirm it, though the infant appeared to have given it knowing it was not good, and for the purpose of collusion.

As to acts of infants being void, or only voidable, there is a diversity between an actual delivery of the thing contracted for, and a bare agreement to deliver it; the first is voidable, but the last absolutely void.

As necessaries for an infant's wife, are necessaries for him, he is chargeable for them, unless provided before marriage; in which case he is not answerable, though she wore them afterwards.

An infant is also liable for the nursing of his lawful child.

Where goods are furnished to the son, he is himself liable if they be necessaries. If tradesmen deal with him, and he undertakes to pay them, they must resort to him for payment; but if they furnished the infant on the credit of his father, the father only is liable.

With respect to education, &c. infants may be charged where the credit was given *bona fide* to them. But where the infant is under the parents' power, and living in the house with them, he shall not be liable, even for necessaries.

If a tailor trust a young man under age for clothes to an extravagant degree, he cannot recover; and he is bound to know whether he dealt at the same time with any other tailor.

If one lend money to an infant to pay a debt for necessaries, and he do pay it, although he is not bound in law, it is said he is in equity; but if the infant misapply the money, it is at the peril of the lender.

A promissory note given by an infant for board and lodging, and



for teaching him a trade, is valid, and will support an action for the money.

And debts contracted during infancy are good considerations to support a promise made to them when a person is of full age; but the promise must be express.

A bond without a penalty for necessaries will bind an infant, but not a bond with a penalty.

Legacies to infants cannot be paid either to them or their parents.

An infant cannot be a juror, neither can he be an attorney, bailiff, factor, or receiver.

By the custom of London, an infant unmarried, and above the age of fourteen, if under twenty-one, may bind himself apprentice to a freeman of London, by indenture with proper covenants, which covenants, by the custom of London, will be as binding as if of age.

If an infant draw a bill of exchange, yet he shall not be liable on the custom of merchants, but he may plead infancy in the same manner as he may to any other contract.

An infant cannot be sued but under the protection and joining the name of his guardian; but he may sue either by his guardian or his next friend who is not his guardian.

An action on an account stated will not lie against an infant, though it be for necessaries.

By the 52 *Geo. 3. c. 32.* for the relief of infant suitors in courts of equity, entitled to stock or annuities in any of the public or other funds, transferable at the bank of England, it is enacted, that the court of chancery or exchequer may order dividends or stocks, &c. in the books of the bank, belonging to infants, to be paid to guardians, for the maintenance of such infants, &c. and the receipt of such guardians for such dividend or money, so ordered to be paid to them, or any part thereof, shall be as good, valid, and effectual.

By the 52 *Geo. 3. c. 158.* the provisions of the preceding act, and also of the 36 *Geo. 3. c. 90.* for the relief of persons entitled to the several stocks and annuities transferable at the bank of England, are extended to South Sea stock, East India stock, and all other stocks.

The court of chancery is empowered to give the orders necessary for the performance of the various duties required by those acts.

Acts done under this act not to be impeached in any court of law or equity; and this act is declared to be a full and complete indemnity and discharge to the South Sea company, the East India company, and all other companies and societies, their officers and servants, for all things done by them pursuant thereto.

**INFORMATION.** An information may be defined an accusation or complaint exhibited against a person for some criminal offence, either immediately against the king, or against a private person, which, from its enormity or dangerous tendency, the public

good requires should be restrained and punished. It differs principally from an indictment in this, that an indictment is an accusation found by the oath of twelve men, but an information is only the allegation of the officer who exhibits it.

Informations are of two kinds: first, those which are partly at the suit of the king, and partly at the suit of a subject; and secondly, such as are only in the name of the king: the former are usually brought upon penal statutes, which inflict a penalty on conviction of the offender, one part to the use of the king and another to the use of the informer, and are a sort of *qui tam*, or popular actions, only carried on by a criminal instead of a civil process.

Informations that are exhibited in the name of the king alone are also of two kinds; first, those which are truly and properly his own suits, and filed *ex officio* by his own immediate officer, the attorney-general; secondly, those in which, though the king is the nominal prosecutor, yet it is at the relation of some private person, or common informer; and they are filed by the master of the crown office, under the express direction of the court. The objects of the king's own prosecutions, filed *ex officio* by the attorney-general, are properly such enormous misdemeanors as peculiarly tend to disturb or endanger the government. The objects of the other species of informations, filed by the master of the crown office, upon the complaint or relation of a private subject, are any gross and notorious misdemeanors, riots, batteries, libels, or other immoralities of an atrocious kind, not peculiarly tending to disturb the government, but which, on account of their magnitude, or pernicious example, deserve the most public animadversion. And when an information is filed either thus, or by the attorney-general *ex officio*, it must be tried by a petit jury of the county where the offence arises; after which, if the defendant be found guilty, he must resort to the court of king's bench for his punishment.

If a common informer shall willingly delay his suit, or discontinue, or be nonsuit, or shall have a verdict or judgment against him, he shall pay costs to the defendant.

And in the court of king's bench, particularly if the defendant shall appear and plead to issue, and the prosecutor shall not, at his own costs, within a year after issue joined, procure the same to be tried; or if a verdict pass for the defendant, or the informer procure a *noli prosequi* to be entered, the said court of king's bench may award the defendant his costs, unless the judge shall certify that there was a reasonable cause for exhibiting such information, and if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance above-mentioned, to compel him thereunto.

**INJUNCTION.** An injunction is a prohibitory writ, restraining a person from committing or doing a thing which appears to be against equity and conscience.

An injunction is usually granted for the purpose of preserving



property in dispute pending a suit; as to restrain the defendant from proceedings at the common law against the plaintiff, or from committing waste, or doing any injurious act.

Injunctions issue out of the courts of equity in several instances; the most usual injunction is to stay proceedings at law; as if one man bring an action at law against another, and a bill be brought to be relieved either against a penalty, or to stay proceedings at law, or some equitable circumstances, of which the party cannot have the benefit at law. In such case the plaintiff in equity may move for an injunction either upon an attachment, or praying a *dedimus*, or praying a farther time to answer; for it being suggested in the bill that the suit is against conscience, if the defendant be in contempt for not answering, or pray time to answer, it is contrary to conscience to proceed at law in the mean time; and therefore an injunction is granted of course; but this injunction only stays execution touching the matter in question, and there is always a clause giving liberty to call for a plea, to proceed to trial, and for want of it, to obtain judgment; but execution is stayed till answer, or farther order.

When a bill in chancery is filed in the office of the six clerks, if an injunction be prayed therein, it may be had at various stages of the cause, according to the circumstances of the case. If the bill be to stay execution upon an oppressive judgment, and the defendant do not put in his answer within the time allowed by the rules of the court, an injunction will issue of course; and when the answer comes in, the injunction can only be continued upon a sufficient ground appearing from the answer itself. But if an injunction be wanted to stay waste, or other injuries of an equally unjust nature, then, upon the filing of the bill, and a proper case, supported by affidavits, the court will grant an injunction immediately, to continue till the defendant have put in his answer, and till the court shall make some further order concerning it; and when the answer comes in, whether it shall then be dissolved, or continued till the hearing of the cause, is determined by the court, upon argument drawn from considering the answer and affidavits together.

The methods of dissolving injunctions are various: when the answer comes in, and the party hath cleared his contempt, by paying the costs of the attachment, if there is one, he obtains an order to dissolve *nisi*, and serves it on the plaintiff's clerk in court, this order takes notice of the defendant's having fully answered the bill, and thereby denied the whole equity thereof; and being regularly served, the plaintiff must shew cause at the day, or the defendant's counsel, where there is no probability of shewing cause, may move to make the order absolute, unless cause, sitting the court.

If the plaintiff who hath an injunction die pending the suit in strictness, the whole proceedings are abated, and the injunction with them; but even in this case the party shall not take out execution without special leave of the court: he must move the court

for the plaintiff to revive his suit within a limited time, or the injunction to stand dissolved; and as this is never denied, so if the suit be not revived, the party takes out execution. There are some instances where a plaintiff may move to revive his injunction; but as that rarely happens, so it is rarely granted, especially where the injunction hath been before dissolved: but where a bill is dismissed, the injunction, and every thing else, is gone, and execution may be taken out the next day.

**INNS AND INNKEEPERS.** Common inns were instituted for passengers, and the duty of innkeepers extends chiefly to the entertaining and harbouring of travellers, finding them victuals and lodgings, and securing the goods and effects of their guests; and therefore if one who keeps a common inn refuse either 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, he is not only liable to render the damages for the injury in an action on the case, at the suit of the party grieved, but also may be indicted and fined at the suit of the king.

In return for such responsibility, the law allows him to retain the horse of his guest until paid for his keep: but he cannot retain such horse for the bill of the owner, although he may retain his goods for such bill; neither can he detain one horse for the food of another.

An innkeeper, however, is not bound to receive the horse unless the master lodge there also.

Neither is the landlord bound to furnish provisions, unless paid before-hand.

If an innkeeper make out unreasonable bills, he may be indicted for extortion; and if either he or any of his servants knowingly sell bad wine, or bad provisions, they will be responsible in an action of deceit.

Any person may set up a new inn, unless it be inconvenient to the public, in respect of its situation, or to its increasing the number of inns, not only to the prejudice of the public, but also to the hindrance and prejudice of other ancient and well-governed inns: for the keeping of an inn is no franchise, but a lawful trade, open to every subject, and therefore there is no need of any licence from the king for that purpose.

An innkeeper is distinguished from other trades, in that he cannot be a bankrupt; for though he buys provisions to be spent in his house, yet he does not properly sell them, but utter them at such rates as he thinks reasonable; and the attendance of his servants, furniture of house, &c. are to be considered; and the statutes of bankruptcy only mention merchants that use to buy and sell in gross, or by retail, and such as get their living by buying and selling, but the contracts with innkeepers are not for any commodities in specie, but they are contracts for horse-room, trouble, attendance, lodging, and necessaries, and therefore cannot come with the design of such words, since there is no trade carried on by buying and bartering commodities.



But where an innkeeper is a chapman also, and buys and sells, he may on that account be a bankrupt, though not barely as an innkeeper, and this has been frequently seen.

Innkeepers are clearly chargeable for the goods of guests stolen or lost out of their inns, and this without any contract or agreement for that purpose; for the law makes them liable in respect of the reward, as also in respect of there being places appointed and allowed of by law for the benefit and security of traders and travellers.

But if a person come to an innkeeper, and desire to be entertained by him, which the innkeeper refuses, because his house is already full; whereupon the party says he will shift among the rest of his guests, and there is robbed, the host shall not be charged.

If a man come to a common inn to harbour, and desire that his horse may be put to grass, and the host put him to grass accordingly, and the horse is stolen, the host shall not be charged; because by law the host is not bound to answer for any thing out of his inn, but only for those things that are *infra hospitium*.

Innkeepers may detain the person of the guest who eats, or the horse which eats, till payment, and this he may do without any agreement for that purpose; for men that get their livelihood by entertainment of others, cannot annex such disobliging conditions that they should retain the party's property in case of non-payment, nor make such disadvantageous and impudent a supposition, that they shall not be paid; and therefore the law annexed such a condition without the agreement of the parties.

By the custom of London and Exeter, if a man commit a horse to an ostler, and he eat out the price of his head, the ostler may take him as his own, upon the reasonable appraisement of four of his neighbours; but the innkeeper hath no power to sell the horse, by the general custom of the whole kingdom.

But it has been held, that though an innkeeper in London may, after long keeping, have the horse appraised, and sell him; yet when he has in such case had him appraised, he cannot justify the taking him to himself at the price it was appraised at.

INQUEST. See JURY.

INQUIRY. See WRIT.

INROLMENT, is the registering, recording, 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 unlawful act; a statute or recognizance acknowledged, a deed of bargain and sale of lands, and the like: but the inrolling a deed doth not make it a record, though it thereby becomes a deed recorded; for there is difference between a 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 inrolment of a deed is a private act of the parties concerned, of which the

court takes no cognizance at the time of doing it, although the court permits it.

By stat. 27 H. 8. c. 16. no lands shall pass, whereby any estate of inheritance or freehold shall take effect, or any use thereof be made, by reason only of any bargain and sale thereof, except the bargain and sale be made by writing indented, sealed, and within six months inrolled in one of the king's courts of record at Westminster; or else within the county where the lands lie, before the clerk of the peace, and one or more justices.

But by 5 Eliz. c. 26. in the counties palatine, they may be inrolled at the respective courts there, or at the assizes.

Every deed, before it is inrolled, is to be acknowledged to be the deed of the party, before a master of chancery, or a judge of the court wherein it is inrolled, which is the officer's warrant for inrolling the same; and the inrolment of a deed, if it be acknowledged by the grantor, it will be a good proof of the deed itself upon trial.

But a deed may be inrolled without the examination of the party himself; for it is sufficient if oath be made of the execution. If two are parties, and the deed be acknowledged by one, the other is bound by it. And if a man live abroad, and would pass lands here in England, a nominal person may be joined with him in the deed, who may acknowledge it here, and it will be binding.

**INSOLVENT DEBTORS.** By the act for the relief of insolvent debtors it is enacted, that every person who shall be a prisoner in any prison in England, upon any process whatever, issuing from any court whatsoever, for or by reason of any debt, damage, cost, sum or sums of money, or contempt for non-payment of money, and who shall have been in actual custody upon some process for some or one of the said debts or demands, during three calendar months, or more, may apply by petition in a summary way to the court for his discharge from such confinement. And such petition shall state the prison wherein such prisoner shall be then confined, the time when he was first charged in custody, or received in prison, together with the name or names of the person or persons at whose suit such prisoner shall be detained in prison, and the amount of the debts for which he shall be so detained, and shall pray to be discharged from custody upon all such process, and to have future liberty of his person against the demand for which he shall be then in custody, and against the demands of all other persons who shall be named or specified as creditors of such prisoner in the schedule annexed to such petition: and such prisoner shall by such petition offer to convey, assign, and deliver to such person or persons as the court shall direct, for the payment of such debts from which such prisoner shall seek to be discharged, all such property as he shall possess or have in his power, as herein-after expressed; the wearing apparel and bedding for such prisoner and his family, and working tools and necessary implements for his



occupation or calling, and other small necessaries, not exceeding in the whole the value of 20*l.* only excepted; and shall also offer to engage to pay so much of all such debts and demands respectively as shall be justly due from such prisoner to such creditor, and as shall not be discharged by means of the property so to be conveyed, assigned, and delivered, in case such prisoner shall at any time thereafter become possessed of sufficient means for such purpose. To which petition shall be annexed a schedule, containing a full and true description of every person to whom such prisoner shall then be indebted, or who, to his knowledge or belief, shall claim to be a creditor, with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner; and also a full just, true, and perfect account and discovery of all the estates and effects, real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his use, benefit, or advantage, in any manner whatsoever, shall have been, or shall be seised or possessed of, or interested in, or entitled unto, or which such prisoner, or any person or persons in trust for him, or for his benefit, shall have had, or shall have any power to dispose of or charge for the benefit or advantage of such prisoner at the time when he was first committed to prison, or charged in custody for any of the debts or sums of money for which he shall then be detained in custody, or at any time subsequent to that time, before and on the day on which the truth of such schedule shall be sworn to by such prisoner as herein directed, together with a full, just, true, and perfect account of all debts at such time owing to such prisoner, or to any person or persons in trust for him, or for his benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debt shall be or shall have been due or owing, and of the witnesses who can prove such debts as shall remain due, (if any such there shall be,) so far as such prisoner can set forth the same; and in what manner any such estate or effects, real or personal, of such prisoner shall have been applied or disposed of since the time when such prisoner shall have been so first committed to prison or charged in custody as aforesaid: and which of such estates or effects shall have been conveyed, assigned, disposed of, charged, or incumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom, and for whose benefit; and which of such estates and effects shall, at the time of swearing to such schedule, be applicable to the discharge of the demands of his creditors; and such schedule shall also truly describe the wearing apparel and bedding of such prisoner and his family, and the working tools and implements, and other small necessaries, intended to be excepted from the assignment proposed by the said petition to be made by such prisoner as aforesaid, together with the value of such excepted articles respectively. And such pri-

soner shall make oath, if required, of the truth of such petition and schedule, to the following effect, or with such variations, according to special circumstances, as shall be consistent with the provisions of this act:—

“ I, *A. B.* upon my corporal oath, in the presence of Almighty God, do solemnly swear and declare, that on the  
 day of \_\_\_\_\_ I was really and truly a prisoner  
 in the actual custody of \_\_\_\_\_ in the prison or gaol  
 of \_\_\_\_\_ at the suit of \_\_\_\_\_  
 for the sum of \_\_\_\_\_ [*as the case may be*] without  
 any fraud or collusion whatever; and that I have ever since been,  
 and now am, a prisoner in \_\_\_\_\_ in the actual custody  
 of the keeper or gaoler of \_\_\_\_\_ [*as the case may be*]  
 or within the liberties thereof, at the suit of \_\_\_\_\_  
 and of \_\_\_\_\_ [*as the case may be*] without any fraud or  
 collusion whatever; and that I have not taken the benefit of any  
 act of parliament made for the relief of insolvent debtors within the  
 space of five years now last past; and that I have not had at  
 any time since I was committed to prison, or charged in custody  
 by the said \_\_\_\_\_ as aforesaid, any means whatsoever  
 of discharging the demands of the said \_\_\_\_\_ and  
 of the other persons named or described as my creditors, or as  
 claiming to be my creditors, in the schedule hereunto annexed  
 and subscribed by me, except the estates and effects mentioned  
 in the said schedule; and that I have not now any means of dis-  
 charging such demands, except so much of the said estates and  
 effects as still remain applicable for that purpose, as expressed in  
 the said schedule; and that all the estates and effects which I have  
 disposed of since I was so first committed to prison, or charged in  
 custody, have been necessarily expended by me for the mainte-  
 nance of myself and family, and for law charges, and other una-  
 voidable expences during my confinement, and in payment of just  
 debts due and owing by me before or since the said  
 day of \_\_\_\_\_ when I was first committed to prison, or  
 detained in custody, at the suit of the said \_\_\_\_\_  
 as aforesaid; and that the said schedule doth contain, to the best  
 of my knowledge and belief, a full, just, true, and perfect account  
 and discovery of all the estates and effects, real and personal, in  
 possession, reversion, remainder, or expectancy, and of every na-  
 ture and kind soever, which I now am, or which any person or  
 persons in trust for me, or for my use, benefit, or advantage, now  
 is or are seised, possessed of, interested in, or entitled unto, or  
 which was or were in my possession, custody, or power, or in the  
 possession, custody, or power of any such person as aforesaid, or  
 which I or any person or persons had any power of disposing of  
 or charging for my benefit or advantage at the time I was so first  
 committed to prison, or charged in custody by the said \_\_\_\_\_  
 as aforesaid, or at any time since that time, and of all  
 debts owing to me, or to any person or persons in trust for me, or  
 for my benefit, either solely, or jointly with any other person or



persons, and of all securities and contracts whereby any money now is, or will, or may hereafter become payable, or any benefit or advantage may accrue, or might have accrued to me or my use, or to any person or persons in trust for me, or for my benefit, at the time I was so first committed to prison, or charged in custody, as aforesaid, and the names and places of abode of the several persons from whom such debts are or were due and owing, and of the witnesses who can prove such debts or contracts as remain due or unperformed, so far as I am able to set forth the same; and that neither I, or any person or persons in trust for me, or for my use and benefit, to my knowledge or belief, have or has any land, money, stock, or other estate or effects whatsoever, real or personal, in possession, reversion, remainder, or expectancy, or of any nature or kind whatsoever, or any power of disposing of, or of charging for my benefit or advantage, any property whatsoever, other than such as are in the said schedule contained or expressed, except the wearing apparel and bedding for myself and family, working tools, and the necessary implements for my occupation and calling, and other small necessaries, not exceeding in the whole the value of 20*l.* mentioned and described in the said schedule, and intended to be excepted from the assignment intended to be made by me; and that I have not, nor hath, or have, any person or persons for me, directly or indirectly, sold, lessened, or otherwise conveyed or disposed of, in trust or otherwise, except as herein before expressed, or in any manner concealed, any part of my lands, money, goods, chattels, stocks, debts, securities, contracts, estates, or effects, real or personal, whereby to secure the same for my own benefit, or whereby I may receive, or expect to receive, any profit or advantage therefrom, or with any intent to defraud or deceive any creditor or creditors to whom I am or was indebted in any wise howsoever. So help me God."

A copy of the petition, schedule, and oath, is to be served on the several persons who shall be specified in the petition as the persons at whose suit such prisoner shall be then in custody, or on their attorneys, together with a copy of the order of the court upon the petition, twenty days at least before the day appointed for hearing the matter of such petition, by delivering such copies to such persons respectively, or leaving them at their usual place of abode; and notice in writing that such petition hath been presented, and such schedule and oath filed in the same court, together with a copy of the order on such petition, shall be served in like manner on all persons named in the schedule as creditors, or claiming to be creditors, or their attorneys; and such service shall, on hearing the petition, be proved on oath.

But the court may, if it thinks fit, order the notices to be inserted in the London Gazette, or some other newspaper, instead of serving them on the several creditors.

And all printers and proprietors of newspapers are required to insert such advertisement, on the payment of 3*s.* for the insertion.

thereof; and no such advertisement is liable to any stamp or other duty whatever.

But if any advertisement contains more than fifty words, there shall be paid for the insertion thereof after the rate of 6d. for every ten words beyond fifty, over and above the sum of 3s. allowed by the act.

The act does not relieve the prisoner from creditors residing abroad, who have had no notice of his petition, unless such creditors afterwards appear to oppose the prisoner, or consent to the proceedings of the court.

Nor does it relieve him from debts contracted abroad, unless he be in actual custody, or have been sued for such debts in some court in England.

Upon the day appointed, or upon such subsequent day as the court shall appoint, the court shall cause the prisoner to be brought before it, or before such persons as it shall direct; and any of the creditors may oppose the petition, and may put such questions to the prisoner as the court shall think fit; and the prisoner shall answer all such questions upon oath; and in case he shall not answer to the satisfaction of the court, or in case it shall appear from such answers, or by evidence, that such prisoner is not entitled to the benefit of the act, the court shall so declare, and shall remand the prisoner. But if the court shall entertain any doubt touching any matter alleged against the prisoner, to prevent his discharge, or touching the examination of such prisoner, the court may remand the prisoner to custody, and afterwards cause him to be again brought up for examination.

The court may order prisoners to be examined before justices in quarter sessions, or any adjournment thereof; and creditors may then object to the prisoner's discharge.

If the court shall be of opinion that the prisoner is entitled to the benefit of the act, then it shall so order and adjudge; and the court may appoint an assignee or assignees, and order conveyances and assignments of the prisoner's estates and effects, together with a recognizance to be executed by such prisoner, to pay so much of the just debts and demands of the several persons against whom such prisoner shall by such court be adjudged entitled to the benefit of the act, as shall not be paid out of the estate and effects to be assigned by such prisoner for such purpose, in case he shall at any time thereafter be enabled to pay such debts and demands, or to pay such part or parts thereof as he shall be able at any time to pay. And the court shall order all books, papers, and writings, in the custody or power of such prisoner, relating to his estate and effects, and the demands of his creditors, to be delivered on oath to such assignee or assignees; and, upon the due execution of all such conveyances, assignments, and engagements, and delivery of such books, papers, and writings, as such court shall direct, the court shall order the prisoner to be discharged from custody. And judgment shall thereupon be entered



in such court against such prisoner, in pursuance of such recognizance as aforesaid; which judgment shall and may, if the said court shall so order, be executed against the future estates and effects of such prisoner, real and personal, as the said court shall direct, and shall bind the assets of such prisoner, real and personal, in the hands of his heirs, executors, and administrators, for the full amount of the debts and demands as aforesaid, which shall remain unsatisfied.

In case any creditor against whom any prisoner shall have obtained his discharge shall, within one year after the date of the order for such discharge, apply to the court to avoid such discharge, as improperly obtained, and it shall appear to the court that such prisoner has acted in any manner fraudulently in obtaining such discharge, or has wilfully concealed any of his estate or effects, it shall be lawful for the court to declare the discharge so obtained null and void; and any creditor or creditors of such prisoner, against whom such discharge shall have been obtained, may proceed against such prisoner as if such discharge had not been obtained, such creditor or creditors relinquishing all benefit of the assignment of the estate or effects of such prisoner which shall remain unapplied by the assignee or assignees. And any of such creditors who shall have detained such prisoner in custody at the time of such discharge shall be at liberty to apply to the court to remand such prisoner again into custody, on the same process from which he had been so discharged; and so much (if any) of the estate or effects of such prisoner as shall then remain in the hands of the assignee or assignees thereof, after paying all the just charges and expenses of such assignee or assignees, to be allowed by the court, shall be re-conveyed, or re-assigned, or paid to such prisoner, as the said court shall direct: but so much of such estates and effects as shall have been applied in payment of the debts of such prisoner, shall be retained by the creditors who shall have received the same in part of their respective demands, excepting only the creditor or creditors who shall apply to the court to avoid such discharge, who shall repay the dividend or dividends received by him, her, or them respectively, to the assignee or assignees, before such order, declaring such discharge null and void, shall be delivered out of the said court.

In case any prisoner, who shall have been discharged by virtue of the act, shall become able to pay all, or any part of the debts against which he shall have obtained such discharge, after a reasonable allowance for the maintenance of his family, and payment of debts contracted after such discharge, or to which such discharge did not extend, it shall be lawful for any creditor or creditors against whom he shall have obtained such discharge to apply to the court for liberty to proceed against such debtor, notwithstanding such discharge; and in case it shall appear that such debtor is of ability to pay such demand, or any part thereof, it shall be lawful for such court to revoke such discharge, either wholly, or upon payment of such sum or sums of money, either in gross or by se-

veral payments, as to such court shall appear reasonable, or to permit execution to be taken out on the judgment entered up in such court, upon the recognizance of such prisoner such sum of money as the said court shall think fit, to be distributed rateably among the creditors entitled under such recognizance; and such proceedings may be had from time to time, until the whole of such debts shall be fully paid and satisfied, together with such costs as the court shall think fit to award; provided, that in case any such application shall appear to the court to be ill-founded and vexatious, it shall be lawful for the court not only to refuse to make any order on such application, but also to dismiss the same with such costs as shall appear reasonable.

Any person, within six months after the appointment of assignees, making a discovery of the prisoner's concealed effects, is entitled to five per cent.

And every person who hath accepted, or shall accept any trust, or shall be possessed of, and wilfully conceal or protect, any estate, real or personal, of any prisoner who shall be discharged under the act, and, knowing such discharge, shall not, within six calendar months, disclose such trust and estate in writing either to the assignee or assignees of the prisoner's estate, or to the commissioner of the court, and submit to be examined touching the same on oath before such commissioner, or before such justice of the peace as he shall appoint, and truly discover and disclose the same, and all particulars thereof, shall forfeit 100*l.* and double the value of the estate, whether real or personal, so concealed, to and for the use of the creditors.

All the estate, right, title, interest, and trust of every prisoner, of, in, and to all the real estate, as well freehold as copyhold or customary, and of, in, and to all the personal estate, debts, and effects of every such prisoner, shall, immediately after the order of the court for the discharge of the prisoner, be vested in the assignee or assignees; and the conveyance and assignment shall be without stamps, and shall be in trust for the creditors.

The assignees are, with all convenient speed, to receive and get in the estate and effects of the prisoner; and if the prisoner shall be interested in, or entitled to, any real estate, either in possession, reversion, or expectancy, the same, within two months after such assignment and conveyance, shall be sold by public auction; and such assignees, at the end of three months at farthest from the time of their accepting such assignment, and so from time to time, as occasion shall require, shall make a fair and just dividend of all the prisoner's estate and effects amongst the creditors from whose demands such prisoner has obtained a discharge.

Creditors for any money payable by way of annuity, or otherwise at any future time, by virtue of any bond, covenant, or other security, may be admitted creditors, and receive dividends, in such manner, and upon such terms, as such creditors would have been entitled to dividends, if such prisoner had become bankrupt, and without prejudice in future to their securities, otherwise than as the



same would have been effected by proof made under a commission of bankrupt, and a certificate obtained by the bankrupt; but subject, nevertheless, to the terms of the recognizance of the prisoner for future payment of his debts.

The act will not entitle the assignees to the pay of any officer of the army or navy, or beneficed clergyman or curate; but the assignees may apply for and obtain a sequestration of the profits of any such benefice; and the court may order such portion of the pay or half-pay of any officer, as, on communication from the court to the secretary at war, or the commissioners of the admiralty, or their secretary, they may respectively consent to.

No prisoner who shall have obtained his discharge shall be imprisoned by reason of any judgment or decree obtained for payment of money only, or for any debt, damage, contempt for non-payment of money, cost, or sums of money contracted, incurred, occasioned, owing, or growing due, with respect to which such discharge had been obtained.

If any prisoner applying to be discharged stands charged in custody with any debt incurred subsequent as well as previous to his application, then the court shall discharge him only from such debts as had been incurred previous to his application.

If any prisoner who shall apply for his discharge has wantonly wasted his estate or effects whilst in prison, or fraudulently disposed thereof, or any part thereof, with intent to deprive his creditors of the benefit thereof; or has wilfully remained in prison, although entitled to be discharged by the act, with intent to consume his property in prison, instead of applying the same to the discharge of his just debts, such prisoner shall not be entitled to the benefit of the act.

Nothing in the act shall extend to discharge any attorney, solicitor or other person acting or pretending to act as such, with regard to any debt for any money or effects recovered or received by him for the use of any one, embezzled, concealed, or converted to his own use; or to discharge any servant, or other person employed or intrusted as such, with regard to any debt for or on account of any money, goods, or other effects received or possessed by him for the use of his master, and by such servant or person embezzled, concealed, or converted to his own use; or to discharge any person with regard to any debt arising from any breach of trust, unless the person to whom such debt shall be due shall consent to such discharge, or unless the prisoner has been confined ten years for such debt.

And no prisoner who by false pretences, or under any fictitious name, assumed for the purpose of obtaining credit, or by any other fraudulent means, shall have obtained money, goods, or other effects; or who shall have fraudulently removed, or caused to have been removed, any stock, cattle, or goods, or effects, of the value of 3*l.* or upwards, which were liable to be distrained by his landlord for rent, whereby such landlord shall have lost all or some part of such rent, shall have any discharge from such debts, unless

the persons entitled thereto shall consent to the discharge, or such prisoner shall have been confined for such debt five years before the time when he shall apply for his discharge.

No prisoner who shall have suffered his bail or surety to be charged in respect of such bail or surety, shall be discharged without the consent of the person entitled to such debt.

No prisoner who shall be charged in execution for damages recovered in any action for criminal conversation with the wife of the plaintiff, or for seducing or carnally knowing the daughter or female servant of the plaintiff in such action, or in any action for a malicious prosecution, or any other malicious injury, shall have any discharge from such debt or damage, unless by consent of the person entitled to such debt or damage, or the prisoner has been confined in prison for such debt five years.

No bankrupt who shall not have obtained his certificate shall be entitled to his discharge from any debt which might have been proved under the commission, unless he shall have been detained in prison, for such debt or damage, five years before he shall apply for his discharge.

Whenever it shall be proved by one witness, or the confession of any prisoner, that such prisoner has, since the time of contracting any debts from which he shall seek to be discharged, sold, transferred, conveyed, or assigned to any person, all or any part of his estate or effects subsequent to his imprisonment, without just cause for so doing (to be determined by the court), and such sale or transfer shall remain in force, so that the creditors cannot have the benefit of such estate or effects without suit at law or equity, such prisoner shall lose all the benefit that he might otherwise have claimed under this act, unless all the creditors will consent to such discharge.

Nothing in the act shall discharge any prisoner who shall have lost the sum of 10*l.* in one day, or 50*l.* in the whole, since the time of his commitment to prison, in playing at cards, dice, tables, tennis, bowls, billiards, or any other game whatsoever, or by bearing a share or part in the stakes, wagers, or adventures, or by betting on the sides or hands of such as do play as aforesaid, unless all the creditors consent to such discharge, or unless such prisoner shall have been confined in prison five years since such money was lost.

If any prisoner seeking the benefit of the act shall appear to the court to have made, within five years before his application to be discharged, any conveyance or assignment of all or any part of his estate or effects, in trust for the benefit of any particular creditor or creditors, with intent to give an undue preference to any, and afterwards obtain a discharge from the demands of any other creditor by virtue of this act, such prisoner shall have no benefit of the act, unless such person for whose benefit such assignment shall have been made shall first relinquish the same, or unless all the creditors shall consent to such discharge.

All persons committed by courts of law or equity for contempts



in not paying money or costs duly taxed, and also upon the writ *de excommunicato capiendo*, or other process, for non-payment of money, costs, or expenses in any ecclesiastical court, may have the benefit of the act.

The act shall not discharge any prisoner with respect to any debt or penalty at the suit of the crown, or of any person for any offence committed against any act relative to the customs, excise, stamp, or salt duties, unless three of the lords commissioners of his majesty's treasury shall consent to the discharge.

And no person who shall have been at any time discharged by virtue of the act, shall be again entitled to the benefit thereof within five years after such discharge; unless three-fourths in number and value of the creditors against whom such person shall seek to be discharged shall signify their assent to such discharge; or unless it shall be made to appear to the court, that such person has, since his former discharge, endeavoured, by industry and frugality, to pay all just demands upon him, and has incurred no unnecessary expense, and that the debts which such person has incurred, subsequent to such former discharge, have been necessarily incurred for the maintainance of such person or his family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself and his family, or from debts incurred prior to such former discharge, to which such discharge did not extend, or from debts incurred subsequent to such discharge, in consequence of engagements entered into, or acts done, prior to such discharge.

If any objection shall be made to the discharge of any prisoner on the ground of misconduct, and it shall appear that he might not have been aware of such objection, so as to be able to answer the same, the court may allow such prisoner sufficient time to answer such objection.

The court is empowered to discharge the prisoner, notwithstanding any objections on the ground of misconduct, when the injury done thereby shall be to small amount. Or if it shall appear that any debt was contracted under fraudulent circumstances not specially provided for by the act, it shall be lawful for the court to except such debt from the discharge, either absolutely, or upon such terms as shall appear proper.

And if it shall appear to the court, upon the examination of any prisoner, or otherwise, that such prisoner has acted with gross injustice towards his creditor or creditors, either in contracting any debts, or entering into any engagements, without any fair prospect or probable means of paying such debts, or fulfilling such engagements, or by squandering or otherwise improperly disposing of his monies, effects, or other property, which he might have applied in paying such debts, either wholly or in part, such prisoner shall not be entitled to his discharge, unless the whole of the creditors shall consent to his discharge, or such prisoner shall have been confined within the walls of any prison for the space of five years.

to be computed from the time when such prisoner shall have applied for his discharge.

The court, and the courts of quarter sessions, shall examine each and every prisoner touching the justice of his conduct towards his creditors; and shall declare in open court whether he has acted with injustice or not.

No prisoner shall be entitled to be examined at any quarter sessions, except in such quarter sessions for such county, division, riding, or place, and at such time whereof he shall have given notice to each and every of his creditors; and no prisoner who shall not appear to be examined pursuant to such notice, shall be brought up before any court to be examined, without having given the like notice at least six months previous to the time at which he shall appear in order to be examined.

**INSURANCES.** Merchants and jurists define insurance, or (as it is also termed) assurance, to be a contract or agreement, by which one or more persons, who are respectively denominated assurers or insurers, oblige or bind themselves to be responsible for the loss of goods, a house, a ship, or other article or thing, in consequence of a premium paid by the proprietors of the things assured.

Marine insurance is an admirable invention of modern times, by which commercial adventures by sea are saved from that immediate destruction which might otherwise ensue from sudden losses occasioned by any of the perils mentioned in the policy or instrument whereby the insurance is effected.

Although much ingenuity and learning have been displayed by writers of celebrity, with the view of ascertaining the origin of marine assurances, we have in fact no authentic evidence for carrying its antiquity higher than the 13th century, when the Hanseatic league was formed. The towns of Lubeck and Hamburg, which were among the earliest members of that far-famed commercial confederacy, distinguished themselves by the extent of their views and the wisdom of their laws respecting trade. By the Lombards, in the 13th century, insurance seems to have been introduced into England.

At common law, any man, or company of men, might have been insurers: and individuals, upon their own separate account, have still the same right; but commerce having suffered considerably by persons in insolvent circumstances underwriting policies of insurance, it was thought expedient to establish two companies for the purpose of making marine insurances, with sufficient funds to answer all demands on their policies; still, however, leaving the merchants to the option of insuring with individual underwriters when they thought proper. To this end, the stat. 6 *Geo.* 1. c. 18. authorized the king to grant charters to two distinct companies or corporations, called the Royal Exchange Assurance, and London Assurance; for the insurance of ships, goods, and merchandizes at sea, or going to sea, and for lending money on bottomry. They



are invested with all the powers usually granted to corporations, and the privilege of purchasing lands to the amount of 1000*l.* per annum each, to provide a sufficient capital to insure all demands on their policies. All other companies are restrained from insuring ships and goods at sea, or lending money on bottomry. And all policies made by any other corporation shall be void, and the sums underwritten forfeited, and all bottomry bonds deemed usurious; but the right of individual insurers continues as before the act. And the court of common pleas has determined that all contracts are unlawful and void which are made in derogation of the privileges of the above-mentioned insurance companies. But notwithstanding the stability which the legislative provisions of Geo. I. contributed to give to marine insurances, this branch of commercial law made but slow progress; nor was it until within the last fifty years that this subject received that legal consideration it deserved, and which has raised our British insurance code to the high degree of celebrity it has attained.

*Nature of an insurance.—What persons and things may be insured.* The agreement which constitutes an insurance is denominated a contract of indemnity, whereby the party, in consideration of a stipulated sum, undertakes to indemnify the other against certain specific perils or risks to which he is exposed, or against the occurrence of such events. The party who takes on himself the risk, is called the insurer; the party protected by the insurance is called the insured; the sum paid to the insurer as the price of this risk is called the premium; and the written instrument, in which the contract is set forth, and reduced into form, is called a policy of insurance.

Marine assurance is made for the protection of persons having an interest in ships, or goods on board, from the loss or damage which may happen from the perils of the sea during a certain voyage, or for a fixed period of time.

In this country, all persons, whether British subjects or aliens, may in general be insured: the only exception is in the case of an alien enemy. He cannot maintain an action on a policy on goods, though they were shipped before the war commenced; nor can an agent of such insured maintain the action, though he be a creditor of the insured for more than the sum insured.

Thus bottomry and respondentia are a particular species of property, which may be insured; but in this case it must be distinctly specified in the policy to be respondentia interest: because, under a general insurance on goods, the party insured cannot recover money lent on bottomry. It has, however, subsequently been ruled that money laid out by the captain for the use of the ship, and for which respondentia interest was charged, may be recovered under an insurance upon goods, specie, and effects, provided it is sanctioned by the usage of trade, which always is received with deference in questions of this nature. A reasonable expectation of profit, on a well-founded expectation of future interests in the thing insured, is an insurable interest. So persons having captured ships

as prizes, may insure their interests therein before such ships are condemned; but they are not entitled to any premium in the event of the capture not being condemned, and sentence being passed by the admiralty court of restitution to the owners. But seamen's wages cannot be insured; neither can the ships or merchandize of enemies.

*Of the policy.* A policy of insurance is the name given to the instrument by which the contract of insurance is effected and reduced into form, and it is not, like most contracts, signed by both parties, but only by the insurer. As the premium, which is the consideration of the promise made by the insurer, is paid, or supposed to be paid, at the time the policy is subscribed, the contract contains nothing in nature of a counter-promise to be performed by the insured: in general, therefore, it contains only the contract on the part of the insurers.

When policies of insurance are once underwritten, it is a general rule that they can never be altered by any authority whatever, for this would tend to let in fraud into a species of contract to which precision and certainty are most indispensably requisite. Cases indeed occur in which, by mutual consent of the parties, policies are altered after execution, and in which also they may be altered on proper evidence. Of this last description are manifest and unquestionable mistakes, which courts of law have always remedied; being bound, in these subjects, by the same rules of construction that prevail in equity.

As it respects the reality of the interest of the parties insured, policies are divided into two classes, wager policies and interest policies. A wager policy is a pretended insurance, founded on an ideal risk, where the insured has no interest in the thing insured, and can therefore sustain no loss by the occurrence of any of the misfortunes insured against. Insurances of this sort are usually expressed by the words interest or no interest, or without further proof of interest than the policy, or without benefit of salvage to the insurer.

Policies of this description are thus expressed in order to preclude all inquiry into the nature of the interest of the party assured; and as a consequence of the insured person's having no interest in the pretended subject of the policy, it necessarily follows that he is liable for any loss or damage the thing insured may partially sustain.

An interest policy is, where the party insured has an actual substantial interest in the thing insured, which interest may be assigned over to another, and in which case only it is a contract of indemnity. Policies of this description are further divided into open and valued. An open policy is where the amount of the insured is not fixed by the policy, but is left to be ascertained by the insured in case a loss should happen.

A valued policy is where a value has been set on the ship or goods insured, and the value is inserted in the policy in the nature of liquidated damages, to save the necessity of proving it in case



of total loss; for by the allowing the value to be thus inserted in the policy, the insurer agrees that it shall be taken as there stated. --- This value is, or ought to be, the real value of the ship, or the prime cost of the goods at the time of effecting the policy.

In a valued policy also, if a part of the cargo be on board when the ship is lost, the rest being ready to be shipped, the insured may recover to the whole amount.

A printed form of the policy is now universally used, and all particular conditions are subjoined in written clauses, which being the immediate act of the parties, they have superior authority whenever they militate against the printed words: and courts of justice always rely upon them as expressing the intention with which the agreement was made.

The form now used is nearly the same which was adopted 200 years ago.

The custody of the policy belongs, of right, to the assured; and an action of trover will lie for this, as for any other valuable paper or property.

*Of the requisites of a policy.* In order to constitute a good and available one, ten particulars are to be introduced, which are briefly detailed in the following notice:—

1. *The name of the party insured.* By 28 Geo. 3. c. 56. persons making policies are required to insert in the policy the name or names, or the usual style or firm of dealing of one or more of the persons interested in such assurance; or instead thereof, there must be inserted the name or names, or the usual style or firm of dealing of the consignor or consignors, consignee or consignees, of the goods or property so to be insured; or the name or names, or the usual style or firm of dealing, of the person or persons residing in Great Britain, who shall receive the order for, and effect such policy, or of the person or persons who shall give the order or directions to the agent or agents immediately employed to negotiate or effect such policy. Pursuant to this statute, every policy made or underwritten contrary to the true intent and meaning of this act shall be null and void to all intents and purposes.

Where a policy is effected by an agent, it is not necessary to add the word agent, or any other description to his name, in the policy itself: and a policy effected by a broker, describing himself therein as agent, is a sufficient compliance with the requisition of the statute 25 Geo. 3.

2. *The names of the underwriters.* By 35 Geo. 3. c. 63. s. 11. all policies not having them specified are declared to be null and void: this, however, is only declaratory of the usage which has always prevailed, because without it there could be no insurer.

3. *The names of the ship and her master.* By the law and usage of merchants, it seems to be necessary that the names of the ship and master should be inserted, although there are insurances generally "upon any ship or ships;" and their validity has been fully ascertained.

4. *The nature of the things insured, viz.* Whether they be ships,

goods, or merchandizes, upon which the insurance is made. It is absolutely necessary that there should be a specification upon which of these the underwriter assures. But it is another question, whether in policies upon goods it be necessary to declare the particulars. The practice is very unsettled; in the opinion, however, of very respectable merchants, the particulars of goods should be specified, if possible, by their marks, numbers, and packages, and not under the general denomination of merchandize. When goods are coming from abroad, it is better to assure under general expressions, on account of the various casualties which may happen to obstruct the purchase of the commodities intended to be sent.

There are certain kinds of merchandize, of a perishable nature, such as corn, fish, salt, fruit, flour, and seed, on which the underwriters will not be answerable for a partial loss, but general average only, unless the ship be stranded. And in insurances on sugar, hemp, flax, hides, skins, and tobacco, they consider themselves free from partial losses not amounting to five per cent. On all other goods, as well as on the ship and freight, for a partial loss under three per cent. unless arising from a general average, or the stranding of the ship, they consider themselves also discharged.

These things are ascertained by memorandum, introduced in the year 1749, and altered by the two companies in 1754, by striking out, "or the ship be stranded," in consequence of a decision by Chief Justice Rider, that a ship having run aground, (although she got off again) was a stranded ship within the meaning of the memorandum.

There are some kinds of property which do not fall under the general denomination of goods in a policy; such as goods lashed on deck, ship's provisions, and captain's clothes. Goods in a policy mean strictly such only as are merchantable, and a part of the cargo.

5. *The name of the place where the goods are laden, and the port to which they are bound.* This has always been held to be necessary; and, from the very nature of the contract, must be requisite. It is customary further to specify at what port or place the ship may touch at or stay during the voyage; so that it shall not be considered a deviation from her course to go to any of such places.

6. *The commencement and continuance of the risk.* In England, the commencement of the risk of the ship varies in almost every case. In outward-bound voyages it is generally made to commence from her beginning to load at her port of her departure. Sometimes privateers on a cruise, ships engaged in the coasting trade, or in short voyages, are insured for a limited period of time; and in such case the risk commences and ends with the term, wherever the ship may then happen to be. If a ship is insured from the port of London to any other port, and before she breaks ground any accident happens to her, the insurers are not answerable; for



the risk does not commence till she sets sail on her departure from the port of London. But if the insurance be allowed, and from the port of London, the insurers are liable to any accident that may happen to her from the time of subscribing the policy. When a ship, expected to arrive at a certain place abroad, is insured at and from that place, or from her arrival there, the risk begins from the first moment of her arrival at the place specified, and the words first arrival are implied, and always understood, in policies so worded. The risk in such cases continues there as long as the ship is preparing for the voyage insured; but if all thought of the voyage be laid aside, and the ship be suffered to lay there for a length of time with the owner's privity, the insurers are not liable. In English policies, it is usually made to continue only until the ship has moored at anchor twenty-four hours in good safety, and on such policies the insurer is liable for no loss after that time.

7. *The risks and perils against which the underwriter assures.*—Insurances may be made against all the risks or perils which are incident to sea voyages, subject, however, to certain exceptions founded in public policy and the interests of humanity, which require that in certain cases men should not be permitted to protect themselves against some particular perils of insurance. But an insurer cannot make himself answerable for a loss, proceeding from the fault of the insured. No insurance can be made, even against the perils of the sea, upon illegal commerce. In order to confine insurances against real and important losses arising from the perils of the sea, and to obviate disputes respecting losses from the perishable quality of the goods injured, and all trivial subjects of litigation, it appears to be the general law of all states, that the insurer shall not be liable for any average loss, unless it exceeds one per cent.; beside which a clause has been introduced into policies, that the insurer shall not be liable for any partial loss under a given rate per cent. In England it is now constantly stipulated in all policies, that upon certain enumerated articles the insurer shall not be answerable for any partial loss whatever; that upon certain others, liable to partial injuries, but less difficult to be preserved at sea, he shall only be liable for partial losses above three per cent. But this does not extend to the losses, however small, called general average, and losses occasioned by the stranding of the ship, and the loss by stranding must be an immediate loss.

8. *The premium or consideration for the risk.* This is the most essential part of the policy, and is always expressed to have been received at the time of underwriting, although in practice, policies are effected, in general, by the intervention of brokers, between whom and the insurers open accounts are kept by the usage of trade. As the underwriter may have an action against the broker for money had and received to his use, it would appear that the broker alone is the debtor to the underwriter.

9. *The day, month, and year, wherein the policy is executed.* This is necessary to ascertain whether any of the parties have been guilty

of fraud or improper conduct, in the event of litigation on any part of the policy.

10. *The policy must be duly stamped.*—As the new stamp duties on policies are specified in the title stamps, which see, it is here only necessary to observe that by 35 G. 3. c. 63. sec. 11. all contracts for insurance must be engrossed or printed, and called a policy of insurance; and that the premium paid or given, the particular risk or adventure insured against, with the names of the subscribers and underwriters, and sums insured, shall be respectively expressed in the policy, otherwise it shall be null and void.

By section 12, no policy is to be made for any certain term longer than twelve calendar months.

Section 13 provides for the making any alteration in the policy after it has been underwritten, so that it be made before notice, after the determination of the risk originally insured, and the premium exceed 10s. per cent. and so that if the thing insured remain the property of the same person, and that the alteration do not prolong the term allowed by this act, or any further sum be insured by reason thereof.

Sections 15th and 16th impose a penalty of 500l. on persons procuring, and brokers effecting, insurances not duly stamped; and the latter cannot either demand brokerage, or the money expended for premiums.

Section 17. Every underwriter is also liable to the like penalty for subscribing such illegal policy.

*Construction of the Policy.* In the construction of policies it is an invariable principle to give effect to the intention of the parties, and to the usage of the trade with reference to the particular voyage or risk to which the policy relates.

A policy of insurance shall be construed to run until the ship shall have ended, and be discharged of the voyage; for arrival at the port to which she was bound is not a discharge till she is unloaded.

But where the owner of goods insured brought down his own lighter, received the goods out of the ship, and before they reached land, an accident happened whereby the goods were damaged, a special jury of merchants, under express direction of the lord chief justice Lee, found that the insurer was discharged, although the insurance was upon goods to London, and till the same should be safely landed there.

But although this construction be right where the policy is general from A. to B. yet if it contains the words usually inserted—“and till the ship shall have moored at anchor twenty-four hours in good safety,” the underwriter is not liable for any loss arising from seizure after she has been twenty-four hours in port, even if such seizure was in consequence of an act of barratry (such as smuggling) of the master during the voyage.

“Warranted to depart with convoy” must be construed according to the usage of merchants; that is, from such place where



convoys are to be had. This principle was also admitted in the case of *Bond v. Gonsales*, upon an assurance from Bremen to the port of London, warranted to depart with convoy. The ship *William* sailed from Bremen under the conduct of a Dutch man of war to the Elbe, where they were joined by two other Dutch men of war and several Dutch and English merchant ships, whence they sailed to the Texel: where they found a squadron of English men of war and an admiral. After a stay of nine weeks, they set sail from the Texel: the ship was separated in a storm, taken by a French privateer, and retaken by a Dutch privateer, and paid 80*l.* salvage. It was ruled by lord chief justice Holt, that the voyage ought to be according to usage; that their going to the Elbe, though out of the way, was no deviation; for till after the year 1703, (prior to which time this policy was made,) there was no convoy for ships directly from Bremen to London.

In an insurance upon freight, if an accident happens to the ship before any goods are put on board, which prevents her from sailing, the assured upon the policy cannot recover the freight which he would have earned if she had sailed.

But, if the policy be a valued policy, and part of the cargo be on board when such accident happens, the rest being ready to be shipped, the assured may recover to the whole amount.

So likewise in an open policy on freight, at and from London and Teneriffe to any of the West India islands, (Jamaica excepted) the underwriters were held liable to pay the insurance, though the ship sailed from London in ballast, and was captured before her arrival at Teneriffe, where her cargo was to be put on board. But as the ship was under a charter party to depart out of the river Thames, and proceed to Teneriffe, and then to load and receive on board from the freighters 500 pipes of wine to be delivered in the West Indies, for the freight of which 500 pipes the freighters covenanted to pay 3*s.* per pipe; the court held, that the instant the ship departed from the Thames, the contract for freight had its inception, and the plaintiff was entitled to recover.

It has been decided in several cases, that the outward risk upon the ship ceases twenty-four hours after her arrival in the first port of the island whither she was bound; but the outward policy on goods continues until such goods are safely landed.

Again policies are to be construed for the benefit of trade and for the assured. Thus, where goods were insured from Malaga to Gibraltar, and from thence to England or Holland, the parties having agreed that the goods might be unloaded at Gibraltar, and re-shipped in one or more British ship or ships, and it appearing in evidence that there was no British ship at Gibraltar, but the goods had been unloaded and put into a store-ship (which was always considered as a warehouse) the insurers were held to be liable for the loss of these goods in the store-ship which had been lost in a storm.

The usage in trade has been more notorious in the East India voy-

ages than in any other; and the charter parties of the India company give leave to prolong the ship's stay in India for a year. It is a common practice by a new agreement to detain her a year longer; and the words of the policy are also very general, without limitation of time or place. On this account the insurers have been held liable, not only for events which may possibly happen from the port of discharge to that of delivery, but also for intermediate or country voyages, and upon which the ship may be dispatched by order of the council of any of the East India company's settlements abroad. And this construction of East India policies prevails, whether the words of them be large and comprehensive, such as with liberty to touch, stay, and trade, at any port or places whatsoever, or restrained and limited, such as to touch and stay at any port or places in this voyage.

But the contracting parties may, by special agreement, prevent such latitude of construction, and express words of exclusion are not necessary to be inserted in the policy; for if it can be collected from the terms used, that such was the intention of the parties, that construction shall prevail.

An underwriter on goods is not liable for freight paid by the owner to the proprietor of the vessel where such goods were partly lost. Nor is an underwriter on ship and goods liable for demurrage (an allowance made by merchants to the master of the ship for detention beyond his proper time); for the freight and not the ship is liable for this loss.

Provisions sent out for the use of the crew are protected by a policy on the ship and furniture. Although it has been decided, in an assurance upon a Greenlander, that the value of lines and tackle employed in the fishery is not recoverable under a policy made upon the ship, tackle, and furniture.

In order to entitle the insured to recover, the loss must be a direct and immediate consequence of the peril insured against, and not a remote one. The principle was laid down and acted upon in the case of *Jones v. Schmoll*. This was an action on a policy, to recover the value of some negroes who had perished by mutiny; which by a special memorandum in the policy was one of the risks insured against. The court decided that the underwriters were liable for all those who were killed in the mutiny, or who died of their wounds; that all those who died of the bruises which they received in the mutiny, though accompanied by other causes, were to be paid for by the underwriters. But they were not liable for those who had swallowed salt water, and died in consequence thereof, or who leaped into the sea, and hung upon the sides of the ship without being otherwise bruised, or who died of chagrin; all these having been lost by too remote a consequence.

The abolition of the nefarious traffic in human flesh has, for ever, we trust, laid this question at rest; although it may be observed, that this case was not considered as forming a general precedent to affect (the then) future assurance on African voyages, as the 34 G. 3. 85.



and 35 G. 3. c. 90. (which statutes regulated the African slave trade), expressly declared that losses of this description are not insurable.

In the construction of policies of insurance for time, the same liberality prevails as in other cases, in order to give effect to the intention of the parties. Thus when an insurance was made "at and from Liverpool to Antigua, with liberty to cruise six weeks, and to return to Ireland, or Falmouth, or Milford, with any prize or prizes;" it was held that this meant a connected portion of time, and not a desultory cruising for six weeks at any time.

*Non-compliance with warrants vitiates the policy.* A warranty, in insurance policies, is a condition that a certain thing shall be done, or shall happen; and, unless that event takes place, there can be no valid contract. Warranties are either express or implied. An express warranty is a particular stipulation introduced into the written contract by the agreement of the parties; as that the thing insured is neutral property, that the ship shall sail by a given day, that she shall depart with convoy, &c.

An implied warranty, is that which reasonably results from the nature of the contract, as that the ship shall be sea-worthy when she sails on the voyage insured, that she shall be navigated with reasonable skill and care, that the voyage is lawful, and shall be performed according to law, and in the usual course, and without deviation, &c. It is, however, immaterial with what view a warranty (whether express or implied) is introduced into the policy; but when it is once inserted, the party insured is bound by it, and must shew that he has literally fulfilled it; or his contract will be the same as if it had never existed.

*Warranty to sail with convoy.* Another species of warranty often inserted in policies in time of war, is to sail or depart with convoy. This, like other warranties, must be strictly performed; and if the ship depart without convoy, from whatever cause, the policy becomes void, and the insurer shall not be answerable even for the peril of the seas.

There are five things essential to a sailing with convoy: 1. It must be with the regular convoy appointed by government. 2. It must be from the place of rendezvous appointed by government. 3. It must be a convoy for the voyage. 4. The ship insured must have sailing instructions. 5. She must depart and continue with the convoy till the end of the voyage, unless separated by necessity.

Warranty of neutrality is a stipulation that the ship or goods insured are neutral property. On this point, it has been decided, that if the ship and property are neutral at the time when the risk commences, this a sufficient compliance with a warrant of neutrality. The insurer takes upon himself the risk of war and peace: for, if the property be neutral at the time of sailing, and a war break out the next day, the insurer is liable.

Neutral property, in the sense of which that expression must be understood in this warranty, is that which belongs to the subject of a state in amity with the belligerent powers.

The documents requisite for neutral ships are: 1. The passport. This is a permission from the neutral state to the captain or master of the ship to proceed on the voyage proposed, and usually contain his name and residence, the name, description, and destination, of the ship, with such other matters as the practice of the place requires. This document is indispensibly necessary for the safety of every neutral ship.

2. The sea-letter or sea-brief, which specifies the nature and quantity of the cargo, the place from whence it comes, and its destination. This paper is not so necessary as the passport, because the former in most particulars supplies its place.

3. The proofs of property, which ought to shew that the ship really belongs to the subjects of a neutral state. If she appear to either belligerent to have been built in the enemy's country, proof is generally required that she was purchased by the neutral before captured, and legally condemned since the declaration of war; and in the latter case the bill of sale, properly authenticated ought to be produced.

4. The muster roll, containing the name, age, quality, place of residence, and above all the place of birth, of every person of the ship's company.

5. The charter party.

6. The bill of lading, by which the captain acknowledges the receipt of the goods specified therein, and promises to deliver them to his consignee or his order.

7. The invoices, which contain the particulars and prices of each parcel of goods, with the amount of the freight, duties and other charges thereon, which are usually transmitted from the shippers to their factors or consignees. These invoices prove by whom the goods were shipped, and to whom consigned.

8. The log-book, or ship's journal, which contains an account of the ship's course, with a short history of every occurrence during the voyage.

9. The bill of health, which is a certificate, properly authenticated, that the ship comes from a place where no contagious distemper prevails, and that none of the crew at the time of her departure were infected with any such distemper.

Upon this subject of the ship's documents, it is to be observed, that though by the law of nations the want of some of these papers may be taken as strong presumptive evidence, yet the want of none of them amounts to conclusive evidence against the ship's neutrality.

*Fraud in policies, (including representation and concealment.)* In policies of insurance both the assurer and the assured are mutually bound to disclose every circumstance that can at all affect the risk.

A representation assurance is denoted to be a collateral statement, either by parole or in writing, of such facts or circumstances relative to the proposed adventure, and not inserted in the policy, as are necessary for the information of the insurer, to enable him to



form a just estimate of the risk. Such representations are often the principal inducements to the contract, and afford the best ground on which the premium can be calculated.

A misrepresentation in a material point avoids the contract; and the insured cannot recover on the policy for loss arising from a cause unconnected with the fact misrepresented. So if it be made without knowing whether it be true or false, or even if the person making it, believe it to be true; but if he only give it as his belief, without knowing the contrary, it will not affect the contract.

Concealment consists in a fraudulent suppression of any fact or circumstance material to the risk. This, like every other fraud, avoids the contract *ab initio*, upon principles of natural justice; for as the facts on which the risk must be estimated, lie generally within the knowledge of the insured or his agent, the underwriter must in most cases rely on him for all necessary information to enable him to decide upon what terms he will take upon himself the proposed risk; and he computes the premium, and enters into the contract, in the confidence that the insured, being fully informed of all circumstances relating to the intended voyage, has dealt fairly with him, and has kept back nothing which it might be material for him to know.

But it is not merely on the ground of fraud that concealment avoids the contract; even an innocent concealment if material, will avoid the policy; the insurer should therefore not conceal any necessary information, but disclose all material circumstances; for a concealment is to be considered not with reference to the event, but to its effect at the time of making the contract.

*Sea-worthiness.* In every insurance, whether of ship or goods, there is an implied warranty of the sea-worthiness of the ship, that is to say, that she shall be tight, staunch, and strong, properly manned, and provided with all necessary stores, and in every other respect fit for the voyage.

Where a ship is lost, or in the course of the voyage condemned as incapable of proceeding to the place of her destination, and this cannot be ascribed to stress of weather or any accident, the presumption is, that she was not sea-worthy, in so far as to throw the proof that she was sea-worthy, on the insured.

A ship must not only be perfect herself, but must, from the nature of her structure, be capable of performing the voyage in which the insurance was made, otherwise she is not tight, staunch, and strong, according to the tenor of the charter-party; and it is also required that there shall be good and sufficient evidence of this, and also that the insured shall bring forward all the evidence he has, of the condition of the ship at time she sailed, and when the loss happened, or she was condemned or unfit to proceed on her voyage. If, on the other hand, the loss or disability of the ship may be fairly ascribed to sea-damage, the proof of the unsea-worthiness lies on the insurers.

Deviation, is a voluntary departure, without reasonable cause, from the regular course of the voyage insured. From the moment

this happens the contract becomes void. The course of the voyage does not mean the nearest possible way, but the usual and regular course. Accordingly, stopping at certain places on the voyage is no deviation, if it be customary so to do; but such usage can only be supported by long and regular practice.

Loss is the injury or damage sustained by the insured in consequence of one or more of the accidents or misfortunes against which the insurer, in consideration of the premium, has undertaken to indemnify the insured, and which perils are all distinctly enumerated in the policy.

Loss is either *total* or *partial*. The term total loss means not only the total destruction of, but also such damage to the thing insured, as renders it of little or no value to the insured, although it may specifically remain. Thus a loss is said to be total, if in consequence of the misfortune that has happened, the voyage be lost or not worth pursuing, and the projected adventure frustrated; or if the value of what is saved be less than the freight, &c.

A partial loss is any thing short of a total loss. Thus if a ship insured for a particular voyage arrive at her port of destination, and there remain twenty-four hours, moored in safety, or if she be insured for a term, and survive the term, no injury which she could have sustained during the voyage in one case, or during the term in the other, however great, can amount to a total loss. So in the case of an insurance on goods, the insurer contracts that they shall arrive safe at the port of delivery. If they specifically remain, and are landed at the port of delivery, however damaged in the voyage, the injury will only amount to a partial loss; being of the nature of those losses which are the subject of average contributions. Partial losses are sometimes stiled average losses.

*Losses by perils of the sea.* These are generally understood to be such accidents or misfortunes as proceed from sea damage; that is to say, such as arise from stress of weather, winds, waves, lightning, tempests, rocks, sands, &c. This sort of loss may happen by the ship's foundering at sea; and then it must, in most cases, be a total loss. It may be by stranding either accidental, where the ship is driven on shore by the winds and waves; or voluntary, when she is run on shore, either to preserve her from a worse fate, or with a fraudulent purpose. If the stranding be followed by shipwreck, then it becomes a total loss; if she has got off and rendered fit to continue the voyage, it is a partial and general average loss. It may also happen from the ship striking on a sudden rock, which may occasion the springing a leak, or absolute shipwreck.

If a ship be not heard of for a reasonable time, she shall be presumed to have foundered at sea, and the insured has a right to recover as such from the underwriters.

A loss by fire, which is merely accidental, and not imputable to the master or mariners, is undoubtedly within the policy. If a ship be burnt, by order of the state where she happens to be, to prevent infection, this also has been held a loss within the policy.



If a ship be attacked by an enemy, and the captain, unable to defend her, leave and set fire to her, to prevent her from falling into the enemy's hands, the insurer is said to be liable.

Capture is where a ship is taken by an enemy in war, or by way of reprisal, or by a pirate. Capture may be with an intent to possess the ship and cargo, or only to seize the goods on board as contraband: the former is a capture, the latter only an arrest or detention. Every capture, whether lawful or unlawful, is within the policy, provided the words of the policy be sufficiently comprehensive. Where the ship is re-captured before abandonment, it is a partial loss, and the insurer is bound to pay the salvage, and other necessary expenses, the insured may have incurred to recover his property. In general, wherever a ship is taken by the enemy, the insured may abandon, and demand as for a total loss: but he is not bound to abandon; if he do, the insurer, in case of re-capture, will stand in his place, and is liable for all fair charges occasioned by the capture.

*Loss by detention of princes, &c.* There is an obvious difference between this and capture; the object of the one is prize, that of the other detention, with a design to restore the ship or goods detained, or pay the value to the owner: and though neither of these should be done, still it must be considered as the arrest of princes, the character of any action depending on the original design with which it was done. An arrest of princes may be at sea, as well as in port; if it be done from public necessity, and not with a view to plunder.

*Loss by barratry.* Barratry is any species of fraud committed by the master or mariners, whereby the owners sustain an injury; as by running away with the ship, wilfully carrying her out of her course, sinking or deserting her, embezzling the cargo, smuggling, or any other offence, whereby the ship or cargo may be subject to arrest, detention, loss, or forfeiture. No fault of the master or mariners amounts to barratry, unless it proceed from an intention to defraud the owners; therefore a deviation, if made through ignorance, unskilfulness, or any motive which is not fraudulent, although it will avoid the policy, does not amount to barratry.

*Loss by average contributions.* The goods on board are, in proportion to their respective interests, towards any particular loss or expense incurred for the general safety of the ship or cargo, so that the particular loser may not be a greater sufferer than the other owners of the goods. Thus, where the goods of a particular merchant are thrown overboard to lighten the ship; where the masts, cables, anchors, or other furniture of the ship; are cut away or destroyed for the safety of the whole; in these, and similar cases, the loss is the proper subject of a general contribution, and ought to be rateably born by the owners of the ship, freight, and cargo, so that the loss may fall proportionably to all.

As to the articles liable to contribute, the rule is, that the ship, freight, and every thing remaining of the cargo, is subject to this charge; therefore money, plate, and jewels, are as much liable as

more heavy and bulky goods. But the persons on board, their wearing apparel, and the jewels belonging to it, shall not contribute; neither are seamen's wages liable to contribute.

*Loss by expense of salvage.* At common law, the party has a lien on every thing saved till payment of salvage; but the regulations now principally in force are ascertained by the statutes 12 *Anne*, c. 18. 26 *G. 2.* c. 19. 33 *G. 3.* c. 66.

The insured need not in his action declare for salvage, but may recover under a declaration for the loss which occasioned it, and the damage which the goods have sustained. In case of neutral ships captured by the enemy, and re-taken by British men-of-war, or privateers, the court of admiralty has a discretionary power of adjusting the salvage. Before an action will lie for a loss by payment of salvage, the amount must be ascertained by decision of the court of admiralty.

*Abandonment.* The insured may abandon in every case where, in consequence of any of the perils insured against, the voyage is lost, or not worth pursuing; where the thing insured is so damaged as to be of little or no value to the owner, where the salvage is immoderate, where what is saved is of less value than the freight, or where further expense is necessary, and the insurer will not undertake to pay that expense, &c.

Shipwreck is generally a total loss. What may be saved of the ship or cargo is so uncertain, that the law cannot distinguish this from the loss of the whole. The wreck of a ship may remain, but the ship be lost. A thing is said to be destroyed when it is so broken, disjointed, or otherwise injured, that it no longer exists in its original nature and essence.—So goods may remain; but if no ship can be procured in a reasonable time to carry them to the place of their destination, the voyage is lost. But a mere stranding of the ship is not of itself a total loss; it is only where the stranding is followed by shipwreck, or the ship is otherwise incapable of prosecuting her voyage.

*Adjustment of loss.* In settling the amount of the indemnity which the insured is entitled to, and fixing the proportion to be paid by each underwriter, the general rule is, that the contract of insurance should not be lucrative to the insured, nor enable him to make a profit out of the loss of another; and he is entitled only to a fair indemnity, according to the damage sustained and the sum insured.

*Fire Insurance.* A policy of insurance against fire is a contract of indemnity, by which the insurers are bound to be responsible against any loss which the insured may sustain from accidents by fire.

A premium is given as a consideration for this policy, and several companies and societies have been established in London and different parts of the country for this purpose: some of these are called contribution societies, in which the parties insured become members or proprietors, participating in profits and losses; such as the Hand-in-Hand and Westminster Fire-offices, and the Union,



for the insurance of goods: the other companies, as the Sun, the London Assurance, the Phoenix, the Royal Exchange, the Imperial, the British, and the Globe, insure houses and goods at their own risk.

The conditions of insurance, which vary in the different offices, are contained in the respective proposals.

The London Assurance inserts a clause, that they will not be liable for any damage by fire, occasioned by any invasion, foreign power, or any military or usurped power whatever: under this clause it has been held that the insurers were liable to make good a loss by fire occasioned by a mob, which, under pretext of the high price of provisions, assembled riotously, and burned down the plaintiff's malting-house.

The Sun Fire-office, in its exempting clause, introduces civil commotions; and under this it was held that they were exonerated from the losses occasioned by the rioters in the year 1780.

The Phoenix Fire-office has a clause that the insured, to be entitled to recover, shall produce a certificate, signed by the minister and churchwardens, as to the character of the insured, and their belief of the loss he has sustained, which is, in law, a condition; and this office will not be liable unless such certificate be produced.

The proposals of these societies comprise the terms of the contract, and the conditions upon which they agree to insure; these proposals, therefore, must be strictly complied with; and when any loss happens, the insured ought to give notice immediately of the loss, stating as particular account of the value as circumstances will permit.

A policy of insurance is not in its nature assignable, nor can it be transferred without the express consent of the office; when, however, any person dies, his interest shall remain in his executors or administrators respectively, who succeed or become entitled to the property, provided such representatives respectively procure their right to be indorsed on the policy.

The party insured to be entitled to indemnity, must prove an interest in the property insured at the time the fire happened. The subject of insurance may be considered under two points of view.

First, the nature and commencement of the risk.

Second, The interest of the insured.

First, *The nature and commencement of the risk.* The risk commences in general from the signing of the policy, unless there be some other time specified. Policies of insurance may be annual, or for a term of years, at an annual premium; and it is usual for the office, by way of indulgence, to allow fifteen days after each year for the payment of the premium for the next year in succession, and provided the premium were paid within that time, the insured has always been considered as within the protection of the office.

The Royal Exchange, the Phoenix, and some other insurance

companies, hold themselves liable during the fifteen days on annual policies only; but every policy for a shorter period than a year ceases at six o'clock of the day therein mentioned.

The Sun Fire-office differs still further in its printed proposals, by stipulating that all persons, on bespeaking policies, shall make a deposit for the policy stamp-duty and mark, and shall pay the premium to the next quarter day, and from thence for one year more at least; and as long as the managers agree to accept the same, make all future payments annually at the said office, within fifteen days after the day limited by the respective policies, upon forfeiture of the benefit thereof; and no insurance is to take place until the premium is actually paid by the insured or his agent. Upon this, however, it has been determined, that if the insured in a policy agree to pay the premium half-yearly, within fifteen days after the expiration of the former half year, and any loss happen within the fifteenth day, but before payment of the renewed premium, the insurers are not liable, though the premium were tendered before the end of the fifteen days.

In case of the burning of houses under lease, and there is an exception of damages by fire, the landlord is not obliged to rebuild, although he may have insured; and if there be an express covenant to pay the rent, the tenant is bound by law to pay the rent for the remainder of the time, although he have no premises to occupy.

Under a general covenant to repair, without any exception as to fire, the tenant, in case of accidental fire, will be compelled to rebuild.

Any trustee, mortgagee, reversioner, factor, or agent, has sufficient interest in the goods under his custody to effect a policy of insurance, provided the nature of such property be distinctly specified at the time of executing such policy.

The advantages resulting from insurance are such, that every prudent tradesman will not hesitate to obtain them; since, by the annual payment of a certain small sum, proportionate to his risk, under the denomination of a premium, he is absolutely indemnified against an eventual large, and perhaps ruinous loss.

In insuring against losses by fire, the sum for which the premium is paid may safely be one-third or one-fourth less than the real value of the property insured, because it seldom happens that the loss is total; and when insured to the full value, the person rather gains than loses by a fire, which may excite suspicion, and occasion expensive and troublesome litigations.

This article has been principally abridged from Mr. Sergeant Marshall's Treatise on the Law of Insurance.

INTEREST is usually taken for a term, or chattel real, and more particularly for a future term.

Interest of money is the premium paid for the use of a sum, and is by law, in this country, limited to five per cent. per annum.

The laws relative to interest are extremely strict, and many different opinions have been formed on the subject. Thus the sum of



1000*l.* borrowed for twelve months, on good security, may be well enough paid for with 50*l.* and it may be difficult, in general, to employ it so as to be able to reap advantage by paying more; but the sum of 20*l.* borrowed for one month, can never be adequately paid for by 1*s.* 8*d.*

The law, as it now stands, forbids, under a heavy penalty, a greater sum to be paid; and the person who would take 3*s.* 4*d.* for the loan of 20*l.* for the period last mentioned, would incur that penalty as indisputably as if he had committed an extortion to a great amount.

The nature of things, however, which is paramount to the regulations of men, has so ordered it, that a loan of a small sum, for a short time, may be as imperiously wanted as a larger one; and it may be, proportionably considered, employed to much greater advantage: the law in this case then prohibits a transaction which would be beneficial to both parties, and which, in its nature, is just as fair as any of the large transactions which it does allow of.

Where an estate is devised for payment of debts, chancery will not allow interest for book debts.

In case of a vested legacy, due immediately, and charged on land, or money in the funds, which yield an immediate profit, interest shall be payable thereon from the testator's death; but if charged only on the personal estate, which cannot be immediately got in, it shall carry interest only from the end of the year after the death of the testator.

Where lands are charged with the payment of a sum in gross, they are also chargeable in equity with payment of interest for such sum.

Interest compound, or interest upon interest, is, as the latter designation expresses, when the interest, instead of being paid, is added to the capital sum, and becomes an increased capital. This is not allowed by law, though it can be practised without infringing any statute, by renewing the bond or instrument, and comprising the whole in it, or by lending the interest separately.

**INTESTATES.** There are two kinds of intestates: one that makes no will at all, and another that makes a will, and nominates executors, but they refuse, in which case he dies an intestate, and the ordinary commits administration.

The ordinary, by special acts of parliament, is required to grant administration of the effects of the deceased to the widow or next of kin, who shall first pay the debts of the deceased, and then distribute the surplus amongst the kindred, in the manner and according to the proportions directed by 22 and 23 *Car. 2. c. 10.*

**INTRUSION,** is when the ancestor dies seised 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 heir, a stranger intrudes.

**INVESTITURE,** is the given possession of lands by actual seisin. The ancient feudal investiture was, where the vassal, on descent of lands, was admitted in the lord's court, and there re-

ceived his seisin, in the nature of a renewal of his ancestor's grant, in the presence of the rest of the tenants: but in after times, entering on any part of the lands, or other notorious possession, was admitted to be equivalent to the formal grant of seisin and investiture.

The manner of grant was by words of pure donation, have given and granted, which are still the operative words in our modern infeodations or deeds of feoffment. This was perfected by the ceremony of corporal investiture, or open and notorious delivery of possession in the presence of the other vassals.

But a corporal investiture being sometimes inconvenient, a symbolical delivery of possession was in many cases anciently allowed of, by transferring something near at hand, in the presence of credible witnesses, which, by agreement, should serve to represent the very thing designed to be conveyed; and an occupancy of this sign or symbol was permitted as equivalent to the occupancy of the land itself. And to this day, conveyance of many of our copyhold estates is made from the seller to the lord, or his steward, by delivering of a rod or verge, and then from the lord to the purchaser, by a re-delivery of the same, in the presence of a jury of tenants.

**JACTITATION OF MARRIAGE**, is when one of the party boasts or gives out that he or she is married to the other, whereby a common reputation of their matrimony may ensue. On this ground the party injured may libel the other in the spiritual court; and unless the defendant undertake and make out a proof of the actual marriage, he or she is enjoined perpetual silence on that head.

**JEWS**. Here in England in former times, the Jews and all their goods belonged to the chief lord where they lived; and he had such an absolute property in them, that he might sell them; for they had not liberty to remove to another lord without leave. They were distinguished from the Christians in their lives, and at their deaths; for they had proper judges and courts, where their causes were decided.

By stat. *Edm.* 1. the Jews, to the number of 15,000, were banished out of England, and never returned till Oliver Cromwell re-admitted them.

Whenever any Jew shall present himself to take the oath of abjuration, in pursuance of the 10th *Geo.* 3. c. 10. the words, upon the true faith of a Christian, shall be omitted out of the said oath in administering it to such persons; and the taking the said oath by persons professing the Jewish religion, without the said words, in like manner as Jews are admitted to give evidence in courts of justice shall be deemed a sufficient taking of the abjuration oath.

By 26 *Geo.* 2. c. 26, bills in parliament were permitted for naturalizing Jews; but this was repealed by 27 *Geo.* 2. c. 1.

**JOINT TENANTS**, are those that come to, and hold lands or tenements by one title, *pro indiviso*, or without partition.



ceived his seisin, in the nature of a renewal of his ancestor's grant, in the presence of the rest of the tenants: but in after times, entering on any part of the lands, or other notorious possession, was admitted to be equivalent to the formal grant of seisin and investiture.

The manner of grant was by words of pure donation, have given and granted, which are still the operative words in our modern infeodations or deeds of feoffment. This was perfected by the ceremony of corporal investiture, or open and notorious delivery of possession in the presence of the other vassals.

But a corporal investiture being sometimes inconvenient, a symbolical delivery of possession was in many cases anciently allowed of, by transferring something near at hand, in the presence of credible witnesses, which, by agreement, should serve to represent the very thing designed to be conveyed; and an occupancy of this sign or symbol was permitted as equivalent to the occupancy of the land itself. And to this day, conveyance of many of our copyhold estates is made from the seller to the lord, or his steward, by delivering of a rod or verge, and then from the lord to the purchaser, by a re-delivery of the same, in the presence of a jury of tenants.

**JACTITATION OF MARRIAGE**, is when one of the party boasts or gives out that he or she is married to the other, whereby a common reputation of their matrimony may ensue. On this ground the party injured may libel the other in the spiritual court; and unless the defendant undertake and make out a proof of the actual marriage, he or she is enjoined perpetual silence on that head.

**JEWS**. Here in England in former times, the Jews and all their goods belonged to the chief lord where they lived; and he had such an absolute property in them, that he might sell them; for they had not liberty to remove to another lord without leave. They were distinguished from the Christians in their lives, and at their deaths; for they had proper judges and courts, where their causes were decided.

By stat. *Edm.* 1. the Jews, to the number of 15,000, were banished out of England, and never returned till Oliver Cromwell re-admitted them.

Whenever any Jew shall present himself to take the oath of abjuration, in pursuance of the 10th *Geo.* 3. c. 10. the words, upon the true faith of a Christian, shall be omitted out of the said oath in administering it to such persons; and the taking the said oath by persons professing the Jewish religion, without the said words, in like manner as Jews are admitted to give evidence in courts of justice shall be deemed a sufficient taking of the abjuration oath.

By 26 *Geo.* 2. c. 26, bills in parliament were permitted for naturalizing Jews; but this was repealed by 27 *Geo.* 2. c. 1.

**JOINT TENANTS**, are those that come to, and hold lands or tenements by one title, *pro indiviso*, or without partition.

These are distinguished from a sole or several tenants, from parceners, and from tenants in common; and they must jointly implead, and jointly be impleaded by others, which properly is common between them and coparceners; but joint tenants have a sole quality of survivorship, which coparceners have not; for if there be two or three joint tenants, and one hath issue and dies, then he or those joint tenants that survive shall have the whole by survivorship.

The creation of an estate in joint tenancy depends on the wording of the deed or devise by which the tenant claims title; for this estate can only arise by purchase or grant, that is, by the act of the parties, and never by the mere act of law. Now if any estate be given to a plurality of persons, without adding any restrictive, exclusive, or explanatory words, as if an estate be granted to A. and B. and their heirs, this makes them immediately joint tenants in fee of the lands; for the law interprets the grant so as to make all parts of it take effect, which can only be done by creating an equal estate in them both. As therefore the grantor has thus united their names, the law gives them a thorough union in all other respects.

If there be two joint tenants, and one release the other, this passeth a fee without the word heirs, because it refers to the whole fee, which they jointly took, and are possessed of by force of the first conveyance; but tenants in common cannot release to each other, for a release supposeth the party to have the thing in demand, and tenants in common have several distinct freeholds, which they cannot transfer otherwise than as persons who are sole seised.

Although joint tenants are seised *per mie et per tout*, yet to divers purposes each of them hath but a right to a moiety; as to enfeof, give, or demise, or to forfeit or lose by default in a *præcipe*; and therefore where there are two or more joint tenants, and they all join in a feoffment, or each of them in judgment gives but his part.

The right of survivorship shall take place immediately upon the death of the joint tenant, whether it be a natural or civil death; as if there be two joint tenants, and one of them enters into religion, the survivor shall have the whole.

At common law, joint tenants in common were not compellable to make partition, except by the custom of some cities and boroughs.

But now joint tenants may make partition; the one party may compel the other to make partition, which must be by deed: that is to say, all the parties must by deed actually convey and assure to each other the several estates, which they are to take and enjoy severally and separately.

Joint tenants being seised *per mie et per tout*, and deriving by one and same title, must jointly implead, and be jointly impleaded with others.



If one joint tenant refuse to join in action, he may be summoned and severed; but herein it is to be observed, that if the person severed die, the writ abates, because the survivor then goes for the whole, which he cannot do on that writ, where on the summons and severance, he went only for a moiety before, for the writ cannot have a double effect, to wit, for a moiety in case of summons and severance, and for the whole in case of survivorship.

But in personal and mixed actions where there are summons and severance, and yet after such summons and severance the plaintiff goes on for the whole, then if one of them die, yet the writ shall not abate, because they go on for the whole after summons and severance; and if they were to have a new writ, it would only give the court authority to go on for the whole.

**JOINTURE.** A jointure, strictly speaking, signifies a joint estate, limited to both husband and wife; but in common acceptation, it extends also to a sole estate, limited to the wife only, and may be thus defined, viz. a competent livelihood of freehold for the wife of lands and tenements, to take effect, in profit or possession, presently after the death of the husband, for the life of the wife at least.

By the statute of the 27 H. 8. c. 10. if a jointure be made to the wife, it is a bar of her dower, so as she shall not have both jointure and dower. And to the making of a perfect jointure within that statute, six things are observed; 1. Her jointure is to take effect presently after her husband's decease. 2. It must be for the term of her own life, or greater estate. 3. It should be made to herself. 4. It must be made in satisfaction of her whole dower, and not of part of her dower. 5. It must either be expressed or averred to be in satisfaction of her dower. 6. It should be made during the coverture.

1. The estate must take effect presently after her husband's decease; therefore if an estate be made to the husband for life, remainder to another person for life, remainder to the wife for her jointure, this is no good jointure, for it is not within the words or intent of the statute; for the statute designed nothing as a satisfaction for dower but that which came in the same place, and is of the same use to the wife; and though the other person die during the life of the husband, yet this is not good; for every interest not equivalent to dower not being within the statute, is a void limitation to deprive the wife of her dower.

2. The estate must be for term of the wife's life, or a greater estate; therefore if an estate be made for the life or lives of many others, this is no good jointure; for if she survive such lives, as she may, then it would be no competent provision during her life, as every jointure within the statute ought to be.

3. The estate should be made to herself; but as the intention of the statute was to secure the wife a competent provision, and also to exclude her from claiming dower, and likewise her settlement,

it seems that a provision or settlement on the wife, though by way of trust, if in other respects it answer the intention of the statute, will be enforced in a court of equity.

4. The estate must be in satisfaction of the whole dower; the reason hereof is, that if it be made in satisfaction of part only, it is uncertain for what part it is in satisfaction of her dower, and therefore void in the whole.

5. The estate must be expressed or averred to be in satisfaction of her dower. Lord Coke says, that it must be expressed or averred to be in satisfaction of her dower; but *quære*, for this does not seem requisite either within the words or intention of the statute.

6. It should be made during the coverture; this the very words of the act of parliament require, and therefore if a jointure be made to a woman during her coverture in satisfaction of dower, she may waive it after her husband's death; but if she enter and agree thereto, she is concluded; for though a woman is not bound by any act when she is not at her own disposal, yet if she agree to it when she is at liberty, it is her own act, and she cannot avoid it.

JUDGE. The judges are the chief magistrates in the law, to try civil and criminal causes. Of these there are twelve in England, viz. the lords chief justices of the courts of king's bench, and common pleas; the lord chief baron of the exchequer; the three puisne or inferior judges of the two former courts, and the three puisne barons of the latter.

By stat. [1 *Geo. 3. c. 23.* the judges are to continue in their offices during their good behaviour, notwithstanding any demise of the crown, (which was formerly held immediately to vacate their seats,) and their full salaries are absolutely secured to them during the continuance of their commissions, by which means the judges are rendered completely independent of the king, ministers, or his successors.

A judge, at his creation takes an oath that he will serve the king, and indifferently administer justice to all men, without respect of persons, take no bribe, give no counsel where he is a party, nor deny right to any, though the king, or any other, by letters, or by expressed words, command the contrary, &c.; and in default of duty, to be answerable to the king in body, land, and goods.

Where a judge has an interest, neither he nor his deputy can determine a cause, or sit in court, and if he do, a prohibition lies.

By 39 *G. 3. c. 110.* an augmentation shall be made of the salaries, of certain judges, to be paid out of the consolidated fund, viz. so much as will make the salaries of the master of the rolls and chief baron amount in the whole to 4000*l.* each, and those of the puisne judges and barons to 3000*l.* each. An account of the salaries and pecuniary profits of each judge shall be delivered to the treasury on September 29, and March 25, in each year, And the sum received half yearly shall be made up 2000*l.* to the master of the rolls and chief baron, and 1500*l.* to the puisne judges and barons, respectively. In case of death or resignation, a proportionable part



of the said sums shall be paid to the personal representatives; but the successor shall receive salaries and profits from the death or resignation of his predecessor. His majesty may grant to the lord chancellor, or keeper of the great seal, an annuity of 4000*l.* to commence on resignation, payable quarterly, out of the consolidated fund, free from taxes. But his majesty may limit the duration and payment of such annuity to an exchancellor or keeper to such periods as he shall not hold any office of profit. The king may grant the following annuities to the other judges, on resignation, payable quarterly out of the consolidated fund, free from taxes, viz. chief justice of the king's bench, 3000*l.*; master of the rolls, chief justice of common pleas, and chief baron, each 2500*l.*; puisne judge or baron, 2000*l.*; but no such grant to such judges shall be valid unless the party shall have continued in office fifteen years, or shall by infirmity be unable to execute the office.

By 39 *Geo. 3. c. 113.* his majesty, during any vacation, while the office of chief justice or judge of the courts is vacant, may cause a writ to be issued out of the court of chancery to any barrister at law he shall think fit, to appear in that court, and take upon himself the dignity of a serjeant at law; and such person shall, on taking the usual oaths, be, without further ceremony, deemed a serjeant at law; and his majesty may grant to that person the office of chief justice, chief baron, or judge or baron of the courts.

Judges are punishable for wilful offences against the duty of their situations; instances of which happily live only in remembrance. There are ancient precedents of judges who were fined when they transgressed the laws, though commanded by warrants from the king.

A judge is not answerable to the king, or the party, for mistakes or errors of his judgment in a matter of which he has jurisdiction.

**JUDGMENT.** The opinion of the judges is so called, and is the very voice and final doom of the law; and therefore is always taken for unquestionable truth; or it is the sentence of the law pronounced by the court upon the matter contained in the record.

Judgments are of four sorts, viz. 1. Where the facts are confessed by the parties, and the law determined by the court, which is termed judgment by demurrer.

2. Where the law is admitted by the parties, and the facts only are disputed, as in judgment upon a demurrer.

3. Where both the fact and the law arising thereon, are admitted by the defendant, as in case of judgment by confession or default.

4. Where the plaintiff is convinced that fact or law, or both, are insufficient to support his action, and therefore abandons or withdraws his prosecution, as in case of judgment upon a non-suit or retraxit.

Judgments are either interlocutory or final.

Interlocutory judgments are such as are given in the middle

of a cause, upon some plea, proceeding, or default, which is only intermediate, and doth not finally determine or complete the suit; as upon dilatory pleas, when the judgment in many cases is that the defendant shall answer aver: that is, put in a more substantial plea.

Final judgments are such as at once put an end to the action, by declaring that the plaintiff hath either entitled himself, or hath not, to recover the remedy he sues for.

Judgments in criminal cases are of two kinds, 1. Such as are fixed and stated, and always the same for the species of crimes. 2. Such as are discretionary and variable, according to the different circumstances of each case.

JURY, a certain number of persons sworn to inquire of and try some matter of fact, and to declare the truth upon such evidence as shall be laid before them.

The jury are sworn judges upon all evidence in any matter of fact.

Juries may be divided into two kinds, common and special. Resort is generally had to the latter in commercial cases, which involve some difficulties relative to mercantile regulations, and are best decided by a special jury of merchants.

A common jury is such as is returned by the sheriff, according to the directions of the statute 3 Geo. 2. c. 25. which appoints that the sheriff's officer shall not return a separate pannel for every separate cause, but one and the same pannel for every cause to be tried at the same assizes, containing not less than forty-eight, nor more than seventy-two jurors, and their names being written on tickets, shall be put into a box or glass, and when each cause is called, twelve of those persons, whose names shall be first drawn out of the box, shall be sworn upon a jury, unless absent, challenged, or excused.

When a sufficient number of persons are impannelled, they are then separately sworn well and truly to try the issue between the parties, and true verdict given according to the evidence.

*Special juries.* These were originally introduced in trials at bar, when the causes were of too great nicety for the discussion of ordinary freeholders. To obtain a special jury, a motion is made in court, and a rule is granted thereupon, for the sheriff to attend the master prothonotary, or other proper officer, with his freeholders' book, and the officer is to take indifferently forty-eight of the principal freeholders, in the presence of the attornies on both sides, who are each of them to strike off twelve, and the remaining twenty-four are returned upon the pannel.

By 4 Geo. 2. c. 7. no person shall be returned as a juror in Middlesex who has been returned in the two terms preceding. And leaseholders in Middlesex, where the improved rents amount to 50*l.* per annum, shall be liable to serve on juries. By 24 Geo. 2. c. 18, persons applying for special juries shall pay the expenses of striking, and also all the charges occasioned by the trial, without allowance upon taxation of costs, unless the judge shall certify that



the cause was proper to be tried by special jury. No person serving on such jury shall take more than the judge shall think reasonable, not exceeding 1l. 1s. except where a view was directed. *Venire* for trials of issues upon penal statutes, or the like, shall be awarded of the body of the county where triable. No challenge shall be taken to any pannel of jurors for want of a knight's being returned.

Jurors are punishable for sending for, or receiving instructions, from either of the parties concerning the matter in question.

Where more than one of the persons returned on a jury shall appear, but not a sufficient number to make an inquest, and some of the others come within view of the court, or into the town where the court is holden, but refuse to come into the court to be sworn, on proof thereof, the court may, at the prayer of the party, order the jurors who appeared to inquire into the yearly value of such defaulter's lands, and after such inquiry made, either summon them to appear, on pain of forfeiting such sum as their lands have been found to be worth by the year, or some less sum, or impose a fine of the like sum upon them, without any farther proceeding. But it seems that such juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it: but a juror who has actually appeared, and afterwards makes default, is said to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not: because his contempt appears to the court by its own record; yet even in this case, the court, in discretion, will sometimes only impose a small fine. Also it seems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to hold his issues, or to be amerced, but not to be fined.

And in causes at *nisi prius*, every person whose name shall be drawn, and who shall not appear after being openly called three times, shall, on oath made of his having been lawfully summoned, forfeit a sum not exceeding 5l. nor less than 40s. unless some reasonable cause of absence be proved, by oath or affidavit, to the satisfaction of the judge.

If any juror shall take of either party to give his verdict, he shall, on conviction by bill or plaint, before the court where the verdict shall pass, forfeit ten times as much as he has taken; half to the king, and half to him who shall sue.

A man who shall assault or threaten a juror for giving a verdict against him, is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of assize, he shall lose his hand and his goods, and the profits of his lands during life, and suffer perpetual imprisonment.

**JURY OF MATRONS.** A jury of matrons is permitted by the wisdom of our laws to be impannelled in two cases. 1. When a widow asserts herself to be with child, in order to exclude the next heir, and a supposititious birth is suspected to be designed, then a *suit de ventre incipiendo* is issued, and a jury of women is appointed to try the question, whether such widow is pregnant or not. 2.

When a woman is convicted of a capital offence, and sentence of death being passed on her, she pleads pregnancy in arrest of execution, a jury of matrons is in like manner impannelled to try whether she is so with child or not. If they find that the convict is pregnant, the execution of her sentence is respited until after her delivery.

JUSTICE, signifies him who is deputed by the king to do right by way of judgment.

*Justices in eyre*, in ancient times, were sent with commissions into several counties, to hear such causes especially as were termed pleas of the crown. And this was done for the ease of the people, who must otherwise have been hurried to the king's bench, if the case were too high for the county court: they differed from the justices of oyer and terminer, because they were sent upon one or for special causes, and to one place; whereas the justices in eyre were sent through the province and counties of the land, with more indefinite and general commissions.

*Justices of gaol delivery*: such as one sent with commission to hear and determine all causes appertaining to such as for any offence are cast into the gaol.

*Justices of oyer and terminer*. As the justices of assize and nisi prius are appointed to try civil causes, so are the justices of oyer and terminer, and gaol delivery, to try indictments for all crimes all over the kingdom, at what are generally denominated the circuits or assizes; and the towns where they come to execute their commission are called the assize towns, and are generally the county towns.

*Justices of the pavillion*, are certain judges of a pie powder court, of a most transcendent jurisdiction, held under the bishop of Winchester at a fair on St. Giles's Hill, near that city, by virtue of letters patent granted by Richard 2. and Edward 4.

*Justices of the peace*, are persons appointed by the king's commission to attend to the peace of the county where they dwell. They were called guardians of the peace till the 36th year of Edw. 3. c. 12 where they are called justices.

A justice of the peace must, before he acts, take the oath of office, which is usually done before some persons in the country, by virtue of a *dedimus potestatem* out of chancery.

Sheriffs, coroners, attorneys, and prætors, may not act as justices of the peace.

The power, office, and duty of this magistrate, extends to an almost infinite number of instances, specified in some hundreds of acts of parliament, which are every year accumulating.

The commission of the peace doth not determine by the demise of the king, nor until six months after, unless sooner determined by the successor: but before his demise, the king may determine it, or may put out any particular person; which is most commonly done by a new commission, leaving out such person's name.

Justices of the peace can only be appointed by the king's spe-



cial commission, and such commission must be in his name; but it is not requisite that there should be a special suit or application to, or warrant from the king for the granting thereof, which is only requisite for such as are of a particular nature; as constituting the mayor of such a town and his successors perpetual justices of the peace within their liberties, &c. which commissions are neither revocable by the king, nor determinable by his demise, as the common commission of the peace is, which is made, of course, by the lord chancellor, according to his discretion.

The form of the commission of the peace, as it is at this day, was, according to Hawkins, settled by the judges about the 23 *Eliz.*

*Jurisdiction.* It seems now to be settled, that justices of the peace have no power to hear and determine felonies, unless they are authorized so to do by the express words of their commissions; and that their jurisdictions to hear and determine murder, manslaughter, and other felonies and trespasses, is by force of the word *assignavimus* in their commission, which gives them, or two of them, whereof one is of the *quorum*, power to hear and determine felonies, &c.

And hence it hath lately been adjudged, that the caption of an indictment of trespass before justices of the peace, without adding *nec non ad diversas felonias, &c. assignat*, is nought.

But though justices of the peace, by force of their commission, have authority to hear and determine murder and manslaughter, yet they seldom exercise a jurisdiction herein, or in any other offences in which clergy is taken away, for two reasons.

1. By reason of the monition and clause in their commission, viz. in case of difficulty to expect the presence of the justices of assize.

2. By reason of the direction of the statute of 1 and 2 *P. and M. c. 13.* which directs justices of the peace, in case of manslaughter, and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing, and then to bail the prisoner, if there be cause, and to certify the same, with the bail at the next general gaol delivery; and therefore, in cases of great moment, they bind over the prosecutors, and bail the party, ifailable, to the next general gaol delivery; but in smaller matters, as petty larceny, and in some cases they bind over to the sessions; but this is only in point of discretion and convenience, not because they have not jurisdiction of the crime.

As to inferior offences, the jurisdiction herein given to justices of the peace, by particular statutes, is so various, and extends to such a multiplicity of cases, that it were endless to endeavour to enumerate them; also they have, as justices of the peace, a very ample jurisdiction in all matters concerning the peace.

And therefore it hath been held, that not only assaults and batteries, but libels, barratry, and common night-walking, and haunting bawdy-houses, and such like offences, which have a direct tendency

to cause breaches of the peace, are cognizable by justices of the peace, as trespasses within the proper and natural meaning of the word.

1. *Qualifications.* On renewing the commission of the peace, (which generally happens when any person is newly brought into the same,) a writ of *dedimus potestatem* is issued out of chancery to take the oath of him who is newly inserted, which is usually in a schedule annexed, and to certify the same into that court at such a day as the writ commands. Unto which oath are usually annexed the oaths of allegiance and supremacy.

2. *Duty.* Justices of the peace are to hold their sessions four times in the year, viz. the first week after Michaelmas, the Epiphany, Easter, and St. Thomas. They are justices of record, for none but justices of record can take a recognizance of the peace. Every justice of the 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 several statutes, justices may act in many cases where their commission does not reach, the statutes themselves being a sufficient commission.

Justices of the peace are authorized to do all things appertaining to their office, so far as they relate to the laws for the relief, maintenance, and settlement of the poor; for passing and punishing ragrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates, notwithstanding they are rated or chargeable with the rates within any place affected by such their acts. Provided that this shall not empower any justice for any county at large, to act in the determination of any appeal to the quarter sessions of such county, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable.

3. *Power.* The power of justices is ministerial, when they are commanded to do any thing by a superior authority, as the court of B. R. &c. In all other cases they act as judges; but they must proceed according to their commission, &c. Where a statute requires an act to be done by two justices, it is an established rule, that if the act be of a judicial nature, or the result of discretion, the two justices must be present to concern and join in it, otherwise it will be void, as in the orders of removal and filiation, the appointment of overseers, and the allowance of the indenture of a parish apprentice; but where the act is merely ministerial, they may act separately, as in the allowance of a poor-rate. This is the only act of two justices which has been construed to be ministerial; and the propriety of this construction has been justly questioned.

If a justice of the peace do not observe the form of proceeding directed by a statute, it is *coram non judge*, and void; but if he act according to the direction of the statutes, neither the justices in sessions nor B. R. can reverse what he has done.



Where a justice shall exceed his authority in granting a warrant, the officer must execute it, and he is indemnified for so doing; but if it be in a case wherein he has no jurisdiction, or in a matter whereof he has no cognizance, the officer ought not to execute such warrant; for the officer is bound to take notice of the authority and jurisdiction of the justice.

*Justices acting improperly.* If a justice of the peace will not, on complaint to him made, execute his office, or if he shall misbehave in his office, the party grieved may move the court of king's bench for an information, and afterwards may apply to the court of chancery to put him out of the commission.

But the most usual way of compelling justices to execute their office, in any case, is by writ of *mandamus* out of the court of king's bench.

Where the plaintiff in an action against a justice shall obtain a verdict, and the judge shall in open court certify, on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall have double costs.

And if a justice of peace act improperly, knowingly, information shall be granted.

No justice shall be liable to be punished both ways, that is, criminally and civilly; but before the court will grant an information, they will require the party to relinquish his civil action, if any such be commenced. And even in the case of an indictment, and though the indictment be actually found, the attorney-general, on application made to him, will grant a *noli prosequi* upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time.

If any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and if he recover, he shall have double costs.

Such action shall not be laid but in the county where the fact was committed.

And no suit shall be commenced against a justice of the peace till after one month's notice.

And unless it is proved upon the trial that such notice was given, the justice shall have a verdict and costs.

And no action shall be brought against any constable, or other officer, or any person acting by his order and his aid, for any thing done in obedience to the warrant of a justice, till demand hath been made, or left at the usual place of his abode, by the party or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same has been refused or neglected for six days after such demand.

And no action shall be brought against any justice for any thing done in the execution of his office, unless commenced within six months after the act committed.

By the 43 Geo. 3. c. 141. for protecting justices of the peace in

the execution of their duty, it is enacted, that in all actions which shall be brought against any justice of the peace, on account of any conviction, in case such conviction shall have been quashed, the plaintiff besides the amount of the penalty which may have been levied, shall not recover greater damages than two-pence, nor any costs, unless it shall be alleged in the declaration in the action (which shall be an action upon the case only) that such acts were done maliciously, and without any reasonable or probable cause. But, on the other hand, any malicious or tyrannical abuse of their office is usually severely punished; and all persons who recover a verdict, for any malicious or wilful injury, are entitled to double costs.

*Justices of peace within liberties*, are such in cities and other corporate towns as those others of the counties, and their authority or power is the same within their several precincts.

*Justices of trail-baston*, were a kind of justices appointed by King Edward I. on account of the great disorders grown in the realm, during his absence in the Scotch and French wars. Their office was to make inquisition through the realm, by the verdict of substantial juries, upon all officers, as mayors, sheriffs, bailiffs, escheators, and others, touching extortion, bribery, and other such grievances; as intrusions into other men's lands, barrators, and breakers of the peace, with divers other offenders; by means of which inquisitions many 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.

**KEEPER OF THE GREAT SEAL**, is a lord by virtue of his exalted office, and stiled the lord keeper of the great seal of England: he is one of the king's privy council, through whose hands pass all charters, commissions, and grants of the king under the great seal; without which seal, all such instruments, by law, are of no force. For the king is, in the interpretation of law, a corporation, and passeth nothing firmly but under the said seal, which is as the public faith of the kingdom, in the high esteem and reputation justly attributed thereto. This lord keeper, by the statute 5 *Eliz. c. 18.* hath the same place, authority, pre-eminence, jurisdiction, execution of the laws, and all other customs, commodities, and advantages, as hath the lord chancellor of England for the time being. He is constituted by the delivery of the great seal to him, taking his oath.

**KEEPER OF THE PRIVY SEAL**, is a lord by virtue of his office, through whose hands pass all charters signed by the king before they come to the great seal. He is of the king's privy council, and was anciently called clerk of the privy seal.

**KING**, signifies him who hath the highest power, and absolute rule over the whole land; and therefore the king is, in intendment of law, cleared of those defects which common persons are subject to; for he is always supposed to be of full age, though never so young. He is taken as not subject to death, but is a corporation in himself. He is *supra legem* by his absolute power. And though



for the better and more equal course in making laws he admits the three estates, that is lords spiritual, lords temporal, and the commons, in council, yet this derogates not from his power; for whatever they act, he by his negative voice may quash. He pardoneth life and limb to the offenders against the crown and dignity, except such as he bindeth himself by oath not to forgive. He may alter or suspend any particular law that seems hurtful to the public.

The law ascribes to his majesty, in his political capacity, an absolute immortality. The king never dies. For immediately on the decease of the reigning prince, in his natural capacity, his imperial dignity, by act of law, without any *interregnum* or interval, is vested at once in his heir, who is *eo instanti* king to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his demise; an expression signifying merely a transfer of property.

By the articles of the union of the two kingdoms of England and Scotland, all papists, and persons marrying papists, are forever excluded from the imperial crown of Great Britain; and in such case the crown shall descend to such person, being a protestant, as should have inherited the same in case such papist, or person marrying a papist, were naturally dead.

**KING'S BENCH.** The king's bench is the supreme court of common law in the kingdom, and is so called because the king used to sit there in person: it consists of a chief justice, and three puisne justices, who are, by their office, the sovereign conservators of the peace, and supreme coroners of the land.

This court has a peculiar jurisdiction, not only over all capital offences, but also over all other misdemeanors of a public nature, tending either to a breach of the peace, or to oppression, or faction, or any manner of misgovernment. It has discretionary power of inflicting exemplary punishment on offenders, either by fine, imprisonment, or other infamous punishment, as the nature of the crime, considered in all its circumstances, shall require.

The jurisdiction of this court is so transcendent, that it keeps all inferior jurisdictions within the bounds of their authority; and it may either remove their proceedings to be determined here, or prohibit their progress below; it superintends all civil corporations in the kingdom; commands magistrates and others to do what their duty requires, in every case where there is no specific remedy; protects the liberty of the subject, by speedy and summary interposition; takes cognizance, both of criminal and civil causes; the former in what is called the crown side, or crown office; the latter in the plea side of the court.

This court has cognizance, on the plea side, of all actions of trespass, or other injury alleged to be committed *vi et armis*; of actions for forgery of deeds, maintenance, conspiracy, deceit; and actions on the case which allege any falsity or fraud.

In proceedings in this court, the defendant is arrested for a sup-

posed trespass, which, in reality, he has never committed; and being thus in the custody of the marshal of this court, the plaintiff is at liberty to proceed against him for any other personal injury, which surmise of being in the custody of the marshal, the defendant is not at liberty to dispute.

This court is likewise a court of appeal, into which may be removed, by writ of error, all determinations of the court of common pleas, and of all inferior courts of record in England.

**KING'S BENCH PRISON.** *King's Bench new rules, 30 G. 3.* it is ordered by the court, that from and after the first day of Trinity term next, the rule made in the sixth year of the reign of King George 1. and all other rules for establishing the rules of the king's bench prison, shall be, and the same are hereby repealed. And it is further ordered, that from and after the said first day of Trinity term next, the rules of the king's bench prison shall be comprised within the bounds following, exclusive of the public-houses hereinafter mentioned: that is to say, from Great Cumber-court, in the parish of St. George the Martyr, in the county of Surry, along the north side of Dirty-lane, and Melancholy-walk to Blackfriar's-road, along the western side of Tower-street, to the Westminster-road, thence along the southern side of Prospect-place, exclusive of the houses, round the direction-post, in the centre of the roads, near the public-house known by sign of the Elephant and Castle, and from thence along the eastern side of Newington-causeway, exclusive of the houses, to Great Cumber-court aforesaid: and it is also ordered, that the new gaol Southwark, and the highway, exclusive of the houses on each side of it, leading from the king's bench prison, to the new gaol, shall be within and part of the said rules. And it is lastly ordered, that all taverns, victualling-houses, ale-houses, and wine-vaults, and houses or places licensed to sell gin, or other spirituous liquors, or theatres, or other places of amusement, shall be excluded out of and deemed not part of the said rules. All places of public worship are considered within the rules.

It is ordered, that every person, on giving proper security to the marshal, shall be entitled to a day rule every day of the term on which the court sits.

**LABOURERS.** See MASTER AND SERVANT.

**LANDLORD.** See DISTRESS, EJECTMENT, LEASE, RENT, TENANT.

**LAND,** in a general and legal signification, comprehends any ground, soil, or earth, as meadows, pastures, woods, moors, waters, marsh, furze, and heath: it includes also messuages, (that is, houses,) tofts, (that is, places where houses once stood,) mills, castles, and other buildings; for in conveying the land, the buildings pass with it.

**LAND-TAX,** a tax imposed on land and personal property, by statutes annually passed for that purpose. This and the malt-tax are considered as annual taxes imposed on the subject.

The assessment, or valuation of estates, made in 1692, though



far from a perfect one, had this effect, that a supply of half a million sterling was equal to 1s. in the pound of the value of the estates given in. And according to this valuation, from the year 1692 to the present time, the land-tax has continued an annual charge upon the subject, above half the time, 4s. in the pound; sometimes at 3s. sometimes at 2s. twice at 1s. but without any total intermission. The method of raising it is by charging a particular sum on each county, according to the valuation in 1692; and this sum is assessed upon individuals by commissioners appointed in the act.

By the 38 *Geo. 3. c. 60.* the land-tax is made perpetual, subject, however, to redemption or purchase, either by the owner of the land, or, on his default, by any other persons disposed to purchase. The money so raised is applied to reduce the national debt. Other statutes have since been passed for promoting the beneficial operation of that act, as the 42 *G. 3. c. 16.* 45 *G. 3. c. 77.* 46 *G. 3. c. 133.* 50 *G. 3. c. 58.* and 52 *G. 3. c. 80.* the provisions whereof will not admit of analysis in this work. By the 52 *Geo. 3. c. 143.* persons forging any contract, assignment, certificate, receipt, or attested copy of a certificate relative to the redemption or sale of the land-tax; and also persons knowingly uttering any such forged instrument, are respectively declared to be guilty of felony without benefit of clergy, and shall suffer death accordingly.

LARCENY, is the felonious and fraudulent taking away of the personal goods of another; which goods, if they are above the value of 12d. it is called grand larceny; if of that value or under, it is petit larceny: which two species are distinguished in their punishment, but not otherwise.

The mind only makes the taking of another's goods to be felony; or a bare trespass only; but as the variety of circumstances is so great, and the complications thereof so mingled, it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; it must therefore be left to the due and attentive consideration of the judge and jury, wherein the best rule is, in doubtful matters, rather to incline to acquittal than conviction. But in general it may be observed, that the ordinary discovery of a felonious intent is, if the party do it secretly, or, being charged with the goods, deny it.

As all felony includes trespass, so every indictment must have the words feloniously took, as well as carried away; whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away.

With respect to what shall be considered a sufficient carrying away to constitute the offence of larceny, it seems that any the least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off.

As grand larceny is a felonious and fraudulent taking of the mere personal goods of another above the value of 12d. so it is petit lar-

teny, where the thing stolen is but of the value of 12d. or under. In the several other particulars above mentioned petit larceny agrees with grand larceny.

In petit larceny there can be no accessories either before or after.

1. *Larceny from the person.* If larceny from the person be done privily, without his knowledge, by picking of pockets or otherwise, it is excluded from the benefit of clergy by 8 *Eliz. c. 4.* provided the thing stolen be above the value of 12d.

But if done openly and avowedly before his face, it is within the benefit of clergy.

2. *Larceny from the house.* Every person who shall be convicted of the feloniously taking away, in the day time, any money or goods of the value of 5s. in any dwelling-house, or out-house thereunto belonging, and used to and with the same, though no person be therein, shall be guilty of felony without benefit of clergy.

3. *Receiving stolen goods.* Any person who shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour, or conceal any felons or thieves, knowing them to be so, shall be deemed accessory to the felony; and being convicted on the testimony of one witness, shall suffer death as a felon convict. But he shall be entitled to his clergy.

Any person convicted of receiving or buying stolen goods, knowing them to be stolen, may be transported for fourteen years.

Where the principal felon is found guilty to the value of 10d. that is, of petit larceny only, the receiver, knowing the goods to have been stolen, cannot be transported for fourteen years, and ought not to have been put upon his trial. For the acts which make receivers of stolen goods knowingly accessories to the felonies, must be understood to make them accessories in such cases only where, by law, an accessory may be; and there can be no accessory to petit larceny.

Every person who shall apprehend any one guilty of breaking open houses in a felonious manner, or of privately and feloniously stealing goods, wares, or merchandizes, of the value of 5s. in any shop, warehouse, coach-house, or stable, though it be not broken open, and though no person be therein to be put in fear, and shall prosecute him to conviction, shall have a certificate, without fee, under the hand of the judge, certifying such conviction, and within what parish or place the felony was committed, and also that such felon was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares, to be divided among the persons concerned, as to him shall seem just and reasonable.

LATITAT, a writ whereby all men in personal actions are called originally to the king's bench.

A latitat may be considered either as the commencement of the



action, or only as a process to bring the defendant into court, at the election of the plaintiff.

If it be stated at the commencement of the action to avoid a tender, the defendant may deny that the plaintiff had any cause of action at the time of suing it out.

Or if it be replied to a plea, of the statute of limitations, the defendant, in order to maintain his plea, may aver the real time of suing it out, in opposition to the rest.

**LAW OF ENGLAND.** The law of England consists of three parts, viz. 1. The common law. 2. Statutes or acts of parliament. 3. Particular customs.

1. *The common law* is derived from the English, Saxons, and Danes; and it is so called from comprising general customs well known and observed throughout the nation; and is distinguished from written or statute law, as being of that antiquity that its origin cannot be easily traced. Customs being only matter of fact, and existing only in the memory of the people, and is neither made by charter nor parliament, whose origin is therefore known, these being matters of record.

2. *The statutes or acts of parliament.* These laws are adapted by the legislature to particular exigencies, and prescribing regulations for all the different varieties of civil intercourse. These statutes are in force as soon as enacted; and to these the people at large, by their representatives, are parties, and are bound to yield obedience to them.

3. *Particular customs*, which are peculiar to certain places, and which are observed as part of the common law, which is composed of these general and local customs, of principles and maxims, and certain particular laws; and the whole are collectively founded upon the laws of nature, of nations, and of religion.

These laws extend, more or less particularly, to all parts of the British empire; their objects are the safety and preservation of the persons and properties of individuals from civil injuries and criminal violence, and promoting that general peace and harmony upon which depend all the comforts and advantages of society.

**LAW OF NATIONS**, is a system of rules deducible by natural reason from the immutable principles of natural justice, and established by universal consent amongst the civilized inhabitants of the world, in order to decide all disputes, and to insure the observance of justice and good faith in that intercourse which must frequently occur between them and the individuals belonging to each; or they may depend upon mutual compacts, treaties, leagues, and agreements between the separate, free, and independent communities.

In the construction of these principles there is no judge to resort to but the general law of nature and of reason, being the only law with which the contracting parties are all equally conversant, and to which they are all equally amenable.

Laws have properly their effect only in the country where and for which they have been enacted. However, 1. those which re-

late to the state, and to the personal condition of the subjects, are acknowledged in foreign countries. 2. A foreigner, who is plaintiff against a subject, must abide by the decision of the law of the country in which he pleads. 3. When the validity of an act done in a foreign country is in question, it ought to be decided by the laws of that foreign country. 4. Sometimes the parties agree to the question being determined by particular laws of a foreign country. 5. A foreign law may have been received as a subsidiary law. 6. Foreigners sometimes obtain the privilege of having their disputes with each other settled by the laws of their own country.

LEASE, is a conveyance of lands or tenements, in consideration of rent, or other annual recompence made for life, for years, or at will, but always for a less time than the interest of the lessor in the premises; for if it were of the whole interest, it would be more properly an assignment.

In all leases there must be a lessor and lessee. He that demises or lets to farm, is the lessor; and he unto whom it is demised or let, is the lessee.

A lease may either be made in writing or by word of mouth, the former of which is the most usual; but, by the statute of frauds, 29 *Car.* 2. c. 3. all leases of lands, except leases not exceeding three years, must be made in writing, and signed by the parties themselves, or their agents duly authorized, otherwise they will operate only as leases at will.

If a lease be but for half a year, or a quarter, or less time, the lessee is respected as a tenant for years; a year being the shortest term of which the law in this case takes notice.

To constitute a good lease, there must be a lessor not restrained from making such lease, a lessee capable of receiving it, and the interest demised must be a demisable interest, and be sufficiently and properly described. 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.

A lease must necessarily be for a shorter time than the lessor, or landlord, possesses in the premises; otherwise it would come under the denomination of an assignment, and not a lease.

No persons but such as are duly qualified should receive any reward for drawing out a lease; for by 44 *Geo.* 3. it is enacted, that "if any person shall, for or in expectation of any fee, gain, or reward, directly or indirectly, draw or prepare any conveyance of, or deed relating to, any real or personal estate, or any proceedings in law or equity, except those who are qualified, having taken out their certificates, they shall forfeit the sum of 50*l.*

In order to make a lease valid, it is requisite that the parties are competent to make a contract, and that the landlord have sufficient interest in the premises to enable him to give a good title to the tenant. Lunatics and married women are incompetent: and by the statute of the 32*d Hen.* 8. it was enacted, "that all leases of any



dwelling-houses or shops within this realm, or any of the king's dominions, made to any stranger, artificer, or handicraftsman, born out of the king's obeisance, not being denizen,\* shall be void, and of non-effect." And the lessor and lessee are liable to the penalty of "one hundred shillings" each.

According to law, all leases of a longer time than three years must be in writing; for by the 29th *Car. 2.* "Leases parole, or by word of mouth, will be void if they exceed three years from the time of making."

An action of debt will lie after the expiration of a lease for rent due before.

A lessee who covenants to pay rent, and to repair, with an exception of casualties by fire, is liable upon the covenant for rent, though the premises be burned down, and not rebuilt by the lessor after notice. It is therefore proper to make an exception as to accidental fire in the covenants to repair and pay rent.

If a lease is made for a longer term than the lessor has therein, a court of equity will establish such lease for his term.

When a lease expresses that if the rent be unpaid at the day appointed, the lease shall be disannulled; yet though the rent be claimed on the day, and not paid, the lease remains valid, unless an entry be made.

When a person has a lease of a house for years, and agrees with the lessor to repair the house during those years, and leave it in as good condition as he found it, and any accident should happen, such as being burnt by fire or lightning, blown down by tempest, or otherwise destroyed, the tenant must build it up again, so as to leave it in as good condition as he found it.

If a landlord gives previous notice, he may enter the premises of his tenant during his term, though it be not expressly agreed, to see the state of the repairs.

The tenant must deliver up possession to the lessor when the lease is expired, or he will be liable to the rent.

The term demised is not effected when the lease is lost or mislaid, provided the tenant can prove the term to be unexpired.

A covenant in a lease not to assign does not extend to an under-lease for part of the term.

A lease may be dated back, but must not be dated forward.

**LEASE AND RELEASE**, a conveyance of the fee-simple, right, or interest, in lands or tenements, which, in law, amounts to a feoffment.

It was invented to supply the place of livery of seisin, and is thus contrived; a lease, or rather bargain and sale, upon some pecuniary consideration, for one year, is made by the tenant of the freehold to the lessee or purchaser, which vests in the said purchaser the use of the term for a year; and then the statute of uses, 27 *H. 8. c. 10.* immediately transfers the uses into possession. He therefore being thus in possession, is capable of receiving a release

\* One who is made an English subject by letters patent.

of the freehold and reversion; and accordingly, the next day, a release is granted to him.

LEGACY, is a bequest of a sum of money, or any personal effects of a testator, and these are to be paid by his representatives, after all the debts of the deceased are discharged as far as the assets will extend.

All the goods and chattels of the deceased are by law vested in the representative, who is bound to see whether there be left a sufficient fund to pay the debts of the testator, which, if it should prove inadequate, the pecuniary legacies must proportionably abate: a specific legacy, however, is not to abate unless there be insufficient without it.

If the legatee die before the testator, such will in general be termed a lapsed legacy, and fall into the general fund; where however, from the general import of the will, it can be collected that the testator intended such a vested legacy, it will in such case go to the representative of the deceased legatee.

If a bequest be made to a person if or when he attains a certain age, the legacy will be lapsed if he die before he attain that age; but if such legacy may be made payable at that age, and the legatee die before that age, such legacy will be vested in his representative.

If in the latter case the testator devise interest to be paid in the mean time, it will nevertheless be vested legacy.

Where a legacy is bequeathed over to another, in case the first legatee die under a certain age, or the like, the legacy will be payable immediately on the death of the first legatee; and though such legacy be not bequeathed over, yet if it carry interest, the representative will become immediately entitled to it.

In case of a vested legacy due immediately, and charged on land, or money in the funds which yields an immediate profit, interest shall be payable from the death of the testator; but if it be charged on the personal estate only of the testator, which cannot be collected in, it will carry interest only from the end of the year after the death of the testator.

If a bequest be for necessaries, and of small amount, the executor will be justified in advancing a part of the principal; but this should be done under very particular circumspection, as the executor may be compelled to pay the full legacy on the infant's attaining his majority, without deducting the sum previously advanced.

When all the debts and particular legacies are discharged, the residue or surplus must be paid to the residuary legatee, if any be so appointed in the will; but if there be none appointed or intended, it will go to the executor or next of kin.

When this residue does not go to the executor, it is to be distributed among the intestate's next of kin, according to the statute of distributions, except the same is otherwise disposable by particular customs, as those of London, York, &c.

LETTER. A servant of the post-office is within the penalty of



5 *Geo. 3. c. 25.* which makes it a capital felony to secrete a letter containing any bank-note, though he have not taken the oath required by 9 *Anne, c. 10.*

*Letter threatening.* All persons who shall knowingly send or deliver any letter or writing, with or without a name or names, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or other infamous punishment, with a view or intent to extort or gain money, goods, wares, or merchandizes, from the person or persons so threatened to be accused, shall be deemed offenders against the law and the public peace; and the court before whom they shall be convicted may order such offenders to be fined and imprisoned, or publicly whipped, or to be transported according to the laws made for the transportation of felons. And further, by 52 *Geo. 3. c. 64.* persons sending such threatening letters, with an intent to extort money or goods, shall be punished in the same manner as if they had actually obtained such money or goods by false pretences.

*Letter of licence,* is a written permission granted to a person under embarrassment, allowing him to conduct his affairs for a certain time without being molested. Such instrument will bind all the creditors by whom it is executed, and it generally contains certain stipulations to be observed by all parties.

LETTERS OF MARQUE, are extraordinary commissions granted to captains of merchants for reprisals, in order to make a reparation for those damages they have sustained, or the goods they have been deprived of by strangers at sea.

These appear to be always joined by those of reprimand for the reparation of a private injury; but under a declared war, the former only are granted.

By 41 *Geo. 3. (u. k.) c. 76.* the admiralty, at the request of the commissioners of customs or excise, may issue letters of marque to persons nominated by the said commissioners and prizes taken shall be divided as commissioners of customs and excise shall direct.

LEVARI FACIAS, a writ directed to the sheriff for the levying a sum of money upon the lands and tenements of him that hath forfeited a recognizance.

LIBEL. A libel is defined a malicious defamation of any person, especially a magistrate, expressed either in printing or writing, or by signs, pictures, &c. tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, and ridicule.

With regard to libels in general, there are, as in many other cases, two remedies; one by indictment, or information, and the other by action. The former for a public offence; for, as has been repeatedly remarked, every libel has a tendency to the breach of the peace, by provoking the person libelled to break it; which offence, we have seen, is the same in point of law, whether the matter contained be true or false; and therefore it is that the defendant, on an indictment for publishing a libel, is not allowed to allege the truth of it by way of justification. But in the remedy by action

on the case, which is to repair the party in damages for the injury done him, the defendant may, as for words spoken, justify the truth of the facts, and shew that the plaintiff has received no injury at all. The chief excellence therefore of a civil action for a libel consists in this, that it not only affords a reparation for the injury sustained, but it is a full vindication of the innocence of the person traduced.

By 32 Geo. 3. c. 60. on the trial of an indictment for a libel, the jury may give a general verdict upon the whole matter put in issue, and shall not be required by the court to find the defendant guilty merely on the proof of the publication, and the sense ascribed to it in the information. But the court shall give their opinion and directions in the matter in issue, as in other criminal cases. The jury may also find a special verdict, and the defendant may move in arrest of judgment as before the passing of this act.

Libel, in the ecclesiastical court, is the declaration or charge drawn up in writing on the part of the plaintiff, to which the defendant is obliged to answer.

LIEN, a law term having two significations; viz. personal lien, such as bond, covenant, or contract; and real lien, a judgment or statute recognizance, which obliges and affects the land.

LIFE ESTATES, or estates for life, are of two kinds; either such as are created by the act of the parties, or such as are created by the operation of law, as estates by courtesy or dower.

Estates for life, created by deed or grant, are, where a lease is made of lands or tenements to a man, to hold for the term of his own life, or for that of another person, or for more lives than one; in any of which cases he is called tenant for life: only when he holds the estate by the life of another he is usually termed tenant *per autre vie*, for another's life.

Estates for life may be created not only by the express terms before mentioned, but also by a general grant, without defining or limiting any specific estate.

If such persons for whose life any estate shall be granted, shall absent themselves seven years, and no proof made of the lives of such persons in any action commenced for the recovery of such tenements by the lessors or reversioners, the persons upon whose lives such estate depended shall be accounted as dead; and the judges shall direct the jury to give their verdict as if the person absenting himself were dead.

LIMITATION, a certain time prescribed by statute, within which an action must be brought. The time of limitation is twofold; first in writs, by divers acts of parliament; secondly to make a title to any inheritance, and that is by the common law.

1. *Limitation on penal statutes.* All actions, suits, bills, indictments, or information, which shall be brought for any forfeiture upon any statute penal, made or to be made, whereby the forfeiture is or shall be limited to the queen, her heirs or successors only, shall be brought within two years after the offence committed, and not after two years; and all actions, suits, bills, or informations, which



shall be brought for any forfeiture upon any penal statute, made or to be made, except the statutes of tillage, the benefit and suit whereof is, or shall be by the said statute limited to the queen, her heirs or successors, and to any other that shall prosecute in that behalf, shall be brought by any person that may lawfully sue for the same, within one year next after the offence committed; and in default of such pursuit, that then the same shall be brought for the queen's majesty, her heirs or successors, any time within the two years, after that year is ended; and it is provided, that where a shorter time is limited by any penal statute, the prosecution must be within that time.

2. *Limitation in regard to personal actions of assault and battery, and actions arising upon contract and trespass.*

All actions of trespass, of assault, battery, wounding, imprisonment, or any of them, shall be commenced and sued within four years next after the cause of such actions or suits, and not after.

3. *Limitation of actions of account, &c.* All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin, all actions of account, and upon the case, (other than such accounts as concern the trade of merchandize, between merchant and merchant) all actions of debt grounded upon any lending, or contract without speciality, (that is, not being by deed or under seal,) all actions of debt for arrearage of rent, and all actions of assault, menace, battery, wounding, and imprisonment, shall be commenced within the time and limitation as followeth, and not after; that is to say, the said actions upon the case, (other than for slander) and the said actions for account, and the said actions for trespass, debt, detinue, and replevin, and the said action for trespass *quare clausum fregit*, within six years, after the cause of such action.

*Exception in relation to infants.* It hath been holden, that if an infant during his infancy, by his guardian bring an action, the defendant cannot plead the statute of limitation; although the cause of action accrued six years before, and the words of the statute are that after his coming of age, &c.

*Exception in relation to merchants' accounts.* As to this exception, it hath been matter of much controversy, whether it extends to all actions and accounts relating to merchants and merchandize, or to actions of account open and current only. But it is now settled, that accounts open and current only are within the statute; and that therefore, if any account be stated and settled between merchant and merchant, and a sum certain agreed to be due to one of them, if in such case, he to whom the money is due, do not bring his action within the limited time he is barred by the statute.

*Exception in relation to persons beyond sea.* It seems to have been agreed, that the exception as to persons being beyond sea, extends only where the creditors or plaintiffs are so absent, and not to debtors or defendants, because the first only are mentioned in the statute; and this construction has the rather prevailed, because it

was reputed the creditor's folly, that he did not file an original, and outlaw the debtor, which would have prevented the bar of the statutes.

*Executor or administrator.* If A receive money belonging to a person who afterwards died intestate, and to whom B takes out administration, and brings an action against A, to which he pleads the statute of limitations, and the plaintiff replies, and shews that administration was committed to him such a year, which was within six years, though six years are expired since the receipt of the money, yet not being so since the administration committed, the action is not barred by the statute.

4. *Where a debt barred by the statute shall be revived.* Any acknowledgment of the existence of the debt, however slight, will take it out of the statute, and the limitation will then run from that time: and where an expression is ambiguous, it shall be left to the consideration of the jury, whether it amounts or not, to such acknowledgment.

It is clearly agreed, that if after the six years, the debtor acknowledge the debt, and promise payment thereof, that this revives it, and brings it out of the statute; as if a debtor, by promissory note, or simple contract, promise within six years of the action brought, that he will pay the debt; though this was barred by the statute, yet it is revived by the promise; for as the note itself was at first but an evidence of the debt, so that being barred the acknowledgment and promise is a new evidence of the debt, and being proved, will maintain an assumpsit for recovery of it.

#### LITERARY PROPERTY. See Books.

**LINEN.** If any person shall use, or cause to be used, any deceit by stretching, or otherwise impairing linen cloth, so as to damage the cloth, he shall forfeit the cloth, and suffer one month's imprisonment at least, and shall pay such fine as three justices shall assess, who shall have power to hear and determine offences at quarter-sessions.

By 10 *Aune*, c. 19. *sect.* 18. upon oath made by any credible persons that they have reason to suspect, that any printed, &c. silks, &c. are in the custody of any draper or other person dealing therein, for sale, without having such marks as required, it shall be lawful for the commissioners within the bills of mortality, or any two justices of the peace in other parts of the kingdom to issue their warrants, requiring any officer for the same duties (with the assistance of a constable or other officers of the peace) in the day-time to search for the same, and to open doors, chests and package, and to seize such goods, and bring them to the office next the place where they shall be seized.

Linen cloth made in Scotland, to be of well-sorted yarn equally wrought and fine, from one end of the piece to the other, and made by the standard yarnwand; and all St. Johnston's and other plain, brown, and green cloth, made for whitening shall be one yard and a nail, or three quarters and a nail broad, that when



whited, it may be a full yard or full three quarters broad; and the whole piece in length eighty-four yards, half piece forty-two yards, &c. that so when whited, it may be eighty, or forty yards, &c. And all other sorts of plain cloth, a full yard, or full three quarters in breadth, and in length forty yards the piece, twenty yards half piece, &c. See measures appointed for linen checks, striped linen, neckclothes, ticken, &c. Any person making linen cloth in Scotland contrary to this act, being convicted thereof by oath of overseer or searcher, of two witnesses, shall forfeit for every inch less than measure in breadth, every yard less in length 5s. and for every piece not made of well-sorted yarn, &c. 5s. Any person buying, or exposing to sale linen cloth not made, &c. according to this statute, shall forfeit for each piece 5s. Conviction in six months before one justice or chief magistrate of this city, &c. On refusal, distress and sale; for want, to be sent to the house of correction so long as the justice shall think fit, not exceeding twelve months; penalties to the poor and informer. Any persons counterfeiting a stamp, forfeit 50l. or a year's imprisonment. Selling linen cloth, &c. before stamped, or exporting it before stamped, such person shall forfeit 5s. a piece for every piece. No stamp-master for himself, or any other, shall buy or dispose of linen cloth, or stamp any, not made as the act directs, on forfeiture of 5s. a piece, and to lose his office for the future. Making use of lime or pigeon's-dung for whitening or bleaching linen cloth in Scotland, forfeit 20s. a piece, on conviction of two witnesses, or confession, to be levied and disposed as aforesaid.

By stat. 13 G. 1. it is enacted, that no person in Scotland shall vend any lintseed or hempseed, by any other measure than the Linlithgow measure streaked, and the fractions thereof, under the penalty of forfeiting the measure used by him, and 40s. sterling.

No person shall sell or import into Scotland any linen yarn, but such as is made up into cuts and hesps, or hanks, each hesp or hank consisting of twelve cuts, and each cut containing 120 threads exactly numbered.

Any justice or magistrate, or any person lawfully authorised, may enter into any house, the house being open, at all times of the day; and if any reels be there found, other than two yards and a half, or ninety inches in circumference, the same shall be carried before a justice or magistrate, who is to break, burn, or destroy them.

If any weaver shall not weave any linen yarn delivered to him into such cloth, and within such time, and in such manner as was contracted for, or shall waste, embezzle, or damnify any yarn delivered to him, he shall make good the party's damage, and also pay to the person aggrieved not exceeding 40s. nor less than 20s.

No person shall use lime, pigeon's-dung, or soap-dregs, for bleaching linen or yarn, on forfeiture of the linen or yarn, and 5l. sterling to the informer; and if the linen or yarn so whitened shall not be found, the justice or magistrate shall set a further fine on

the offender, not exceeding 5*l.* to be levied, together with the former 5*l.* as hereafter is directed; and the offender shall also be incapable to bleach or whiten cloth or yarn for two years after such conviction.

One or more justices, or any magistrate within a borough, may summon the servant of any bleacher or dealer in hempseed or lintseed, or any other person, and examine him on his oath what he knows of his master, or other persons, using lime, pigeon's dung, or soap dregs in bleaching of linen or yarn, or other breach of this act, for three months immediately preceding such examination. And if such person shall refuse to appear on summons, the justice may issue his warrant to bring him before him; and if he refuse to be examined, or answer on oath to the purpose, the justice or magistrate shall commit him to the adjacent gaol or tolbooth, there to remain till he submit to be examined; the person desisting such an oath to be tendered to such servant or person first making oath, if required, that he believes the person whom he desires to be examined on oath can discover some breach of this act; but no servant or person shall be liable to any punishment for any thing relating to the crime which on examination he shall discover.

His majesty, by letters patent under the great seal, appointed by the treaty of union to be kept in Scotland, may appoint any number of persons resident in Scotland, not exceeding twenty-one, to be trustees for over-seeing the linen and Lempen manufactures, with power to assemble at such places, and to make such rules for the improvement of the said manufactures, and for preventing abuses therein, as they shall think expedient, consistent with the intent of this act and the laws of the realm.

All dealers in linen, before they expose to sale any cloth, (if the same be white,) shall carry it in the water fold of a yard or half-yard in length, to the lapper or stamp-master, there to be marked, lapped up, and stamped: and none shall expose to sale any manufacture of linen yarn till the same be brought to the lapper: and if it be made according to the rules in the act prescribed, he shall measure, stamp, and lap it, within twenty-four hours; and if any lapper shall stamp any piece of cloth not made according to the rules in this act prescribed, or mark a greater number of yards than the piece contains, or of a greater breadth, or commit any other offence, he shall make good the damages to the party who bought the cloth on the credit of the stamp, and also 5*l.* for every insufficient piece of cloth, and be dismissed from his office, and rendered incapable of any such office for the future.

If any person shall expose to sale, or pack up for sale, or in order to be sent by land or water, or enter for exportation any linen not stamped and marked, he shall forfeit 5*l.* for each piece, to be levied as hereafter-mentioned.

And the buyer of such linen cloth not stamped shall forfeit 5*l.* to the informer, to be levied in the same manner as the penalties on persons selling linen cloth not duly stamped.



The persons appointed by the trustees or by warrant of a justice or magistrate, may search, in the day-time, all warehouses, or other places, and open any packs; and if any pieces be found not stamped, they may seize and bring them before the next justice or magistrate, who are to declare them to be forfeited to the seizor, and to impose a fine on the owners of the warehouse, &c. where such linen shall be found, and the persons who packed it up, not exceeding 5*l.* sterling, for the use of the informer.

If any person shall counterfeit any seal or stamp, being thereof convicted before the court of justiciary at Edinburgh, or in the circuits, he shall incur the same pains as persons, by the law of Scotland, convicted of forgery suffer.

Every trade and weaver of linen manufacture may weave his name, or fix some known mark in any piece of linen by him made; and if any other shall counterfeit such mark, on conviction on the oath of one or more credible witnesses, he shall forfeit 100*l.* to the person whose mark shall be counterfeited.

All offences against this act (except the counterfeiting the marks of private dealers) shall be determined by one or more justices, or any magistrate within a borough, who, on complaint, shall, on examination of witnesses on oath, adjudge the same, and issue his or their warrant to the constables of the place, requiring them to distrain according to the laws of Scotland, so much of the offender's goods as will satisfy the penalties, &c. And if no distress can be found, the justices may commit the offender to the house of correction, or next gaol, for so long time as they shall think proper, not exceeding one year in the whole.

If any find himself aggrieved by the determination of the justices, he may, immediately after sentence, enter his appeal, in the presence of the justices, from the said sentence to the next quarter-sessions; of which appeal the justices are to make a minute, and stop execution till the end of the next quarter-sessions, and the justices at their quarter-sessions are to proceed upon and finally determine the said appeal; and if they give judgment against the appellant, to decree him to pay the full costs of the appeal, and to pay a fine not exceeding double the penalty for which the original sentence was given.

By stat. 4 *Geo.* 2. if any maker of sail-cloth in Great Britain shall expose to sale any piece or pieces of sail-cloth without being stamped at the end of every piece of sail-cloth with a stamp, containing the name and place of abode of such maker in plain distinct letters and words at length, being lawfully convicted on the oath of one or more witnesses, before one or more justices of the peace for the county, city, or town, where the offence shall be committed, shall forfeit 5*l.* for every piece of sail-cloth sold or exposed to sale, not being stamped as aforesaid; and if any person shall wilfully or maliciously cut off, destroy, or obliterate any stamp so affixed, or shall affix, or make use of any stamp on which shall be marked the name and place of abode of any other person, and not his or their real name or names, and place or places of abode, such

persons being convicted of any of the offences aforesaid shall for every such offence forfeit 10l.; both which last-mentioned forfeitures shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of two or more justices for the county, riding, &c. where the offence shall be committed, and shall go to the informer.

LITURGY. See BLASPHEMY.

LODGINGS AND LODGERS. The laws of England do not seem to make any distinction between lodgers and other tenants as to the payment of their rents, or the turning them out of possession; for lodgers are equally liable to the like regulations, penalties, and forfeitures, in case of non-payment of their rents, or not quitting the premises according to notice and agreement, as other tenants are.

But with respect to lodgings, an exception must be made to the rule laid down that notice must expire on the quarter-day whereon the tenancy began. This exception refers to weekly, monthly, and quarterly lodgers, but not to those who agree for possession by the year. Notice depends either upon the agreement between the parties, or the particular circumstances of the case, as the length of the time for which lodgings are taken, &c. If for a less term than a year certain, any reasonable notice is held to be sufficient.

What is reasonable notice must, in case of dispute, be decided by a jury. In London, if no particular notice is mentioned, it is generally understood that a week's notice shall be given if the apartments are taken by the week; a month's notice if taken by the month; and a quarter's notice if taken by the quarter; but if they are taken for a month, or any other time certain, no notice is expected or required, it being necessarily implied that when the period for which they were taken arrives the tenant is to depart, unless he enter into some fresh agreement.

A housekeeper may detain the property of a lodger, whilst on the premises, till the rent is paid.

A housekeeper may distrain the goods of a lodger for rent, in the same manner as a landlord distrains those of a tenant.

Lodgings ready furnished are usually let by the week, on payment of a certain sum, part of which is for the apartment, and part for the use of the furniture, which has given rise to a question of some difficulty, whether the whole is, or is not, rent? It was the opinion of a barrister, whose writings have been held in considerable estimation, that the whole is not rent, and that it is therefore unlawful to distrain the property of a lodger for that part of the sum which is due for the use of the furniture. Many lodgers have placed too much confidence in this opinion, and have neglected to pay their rent till, contrary to their expectation, their property has been distrained and sold.

Persons renting furnished apartments frequently absent themselves without apprizing the housekeeper, and probably the rent



in arrear. If the housekeeper has reason to believe the lodger has left, the second week of such absence he should send for a constable, and, in his presence, enter the apartment, take out the lodger's property, and secure it until a request be made for it: and the housekeeper may take possession of his apartment; and if, after fourteen days' public notice given in the London Gazette, the lodger does not come and pay the arrears, the housekeeper, for the sum due, may sell the said property.

Taking goods, &c. from furnished lodgings, with intent to steal, is felony.

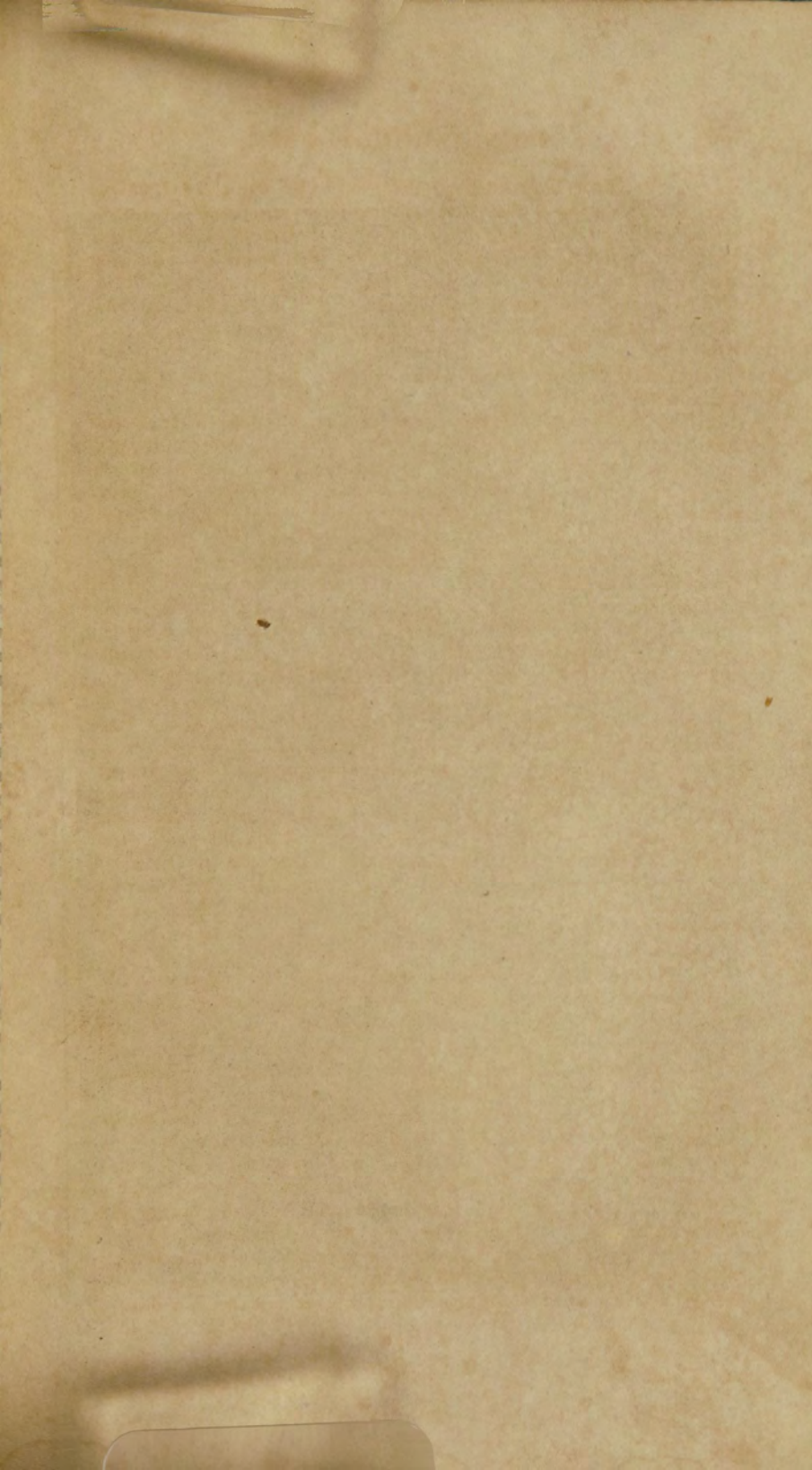
Housekeepers and lodgers cannot be too cautious in their agreements respecting the time they agree for, and the notice they require, as the loose and indefinite manner in which lodgings are frequently let renders both housekeepers and lodgers liable to many disputes. The general intention is to let unfurnished lodgings by the quarter; but the rent being stated at twenty or thirty pounds a year, it frequently happens that the lodger (and sometimes the housekeeper) asserts that the agreement was by the year, and demands half a year's notice at the end of a complete year from the commencement. In letting lodgings quarterly, it would certainly be more correct to state the rent at five pounds a quarter, than at twenty pounds a year; and the notice should be particularly specified.

Annual lodgers are properly admissible under a housekeeper who is the proprietor of the premises, or who holds possession by a lease for an unexpired term of years, because such a housekeeper is able to give half a year's notice to his lodgers, so that they may quit at the end of a complete year, from the time of their commencement. It is necessary that the intentions of the parties should be clearly stated and understood, as this is not the usual way of letting apartments; nor is it proper under a housekeeper who holds only from year to year, as he is liable to receive notice from his landlord to quit at a time when he could not give proper notice to annual lodgers.

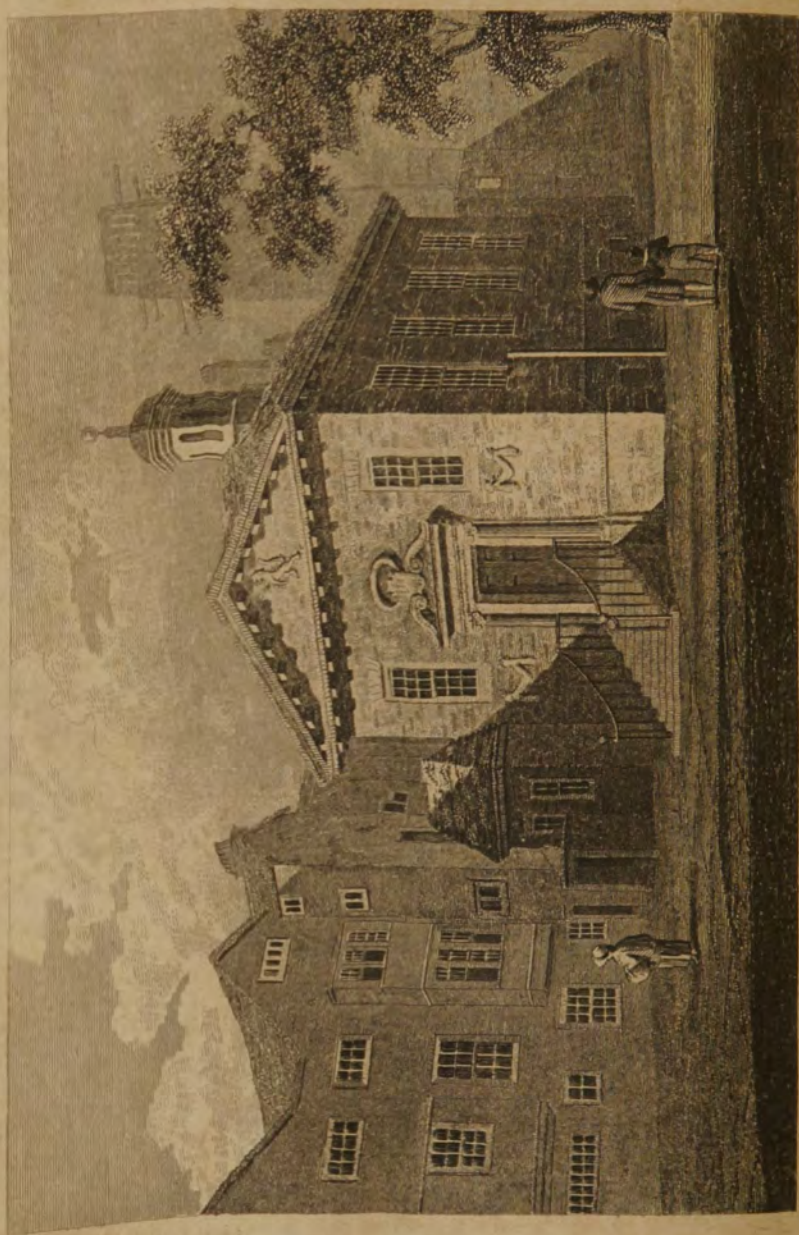
The best way for a housekeeper to recover possession when he has let an apartment to a disagreeable character, is to give him reasonable notice, by a person who can be witness, to quit or pay an advanced rent, not exceeding double the present sum.

In case lodgers of this class are so refractory that they will neither quit nor pay the advanced-rent, after proper warning or notice to quit has expired, the housekeeper may enter the apartments whenever he finds them open, (but he must use no force in opening them;) he may take out the sashes, remove any of his own fixtures or furniture, take the door off the hinges, or lock or fastening off the door, and block up the chimney. But he is answerable to the landlord for any injury done to the premises.

In the city of London, rent may be procured by summoning to the court of requests, Guildhall, for any sum not exceeding 5l; rent to the same amount may be recovered in the borough of







Southwark ; other courts of conscience, in general, cannot recover more than 40s. But if the party resides within twelve miles of his majesty's palace at St. James's, and not in the city, the debt will come within the jurisdiction of the marshalsea court, which is now held every Friday, in Great Scotland Yard, Westminster, subject to an appeal to a higher court, when the sum exceeds 5*l*.

In apartments furnished by the lodger, a distress for double rent, if not paid when justly due, generally puts an end to the dispute.

LONDON. See CUSTOMS.

LOTTERIES are declared to be public nuisances ; but for the public service of the government, lotteries are frequently established by particular statutes, and managed by special officers and persons appointed.

By the state 10 and 11 *W. 3. c. 17.* all pretended lotteries are declared to be public nuisances, and all grants and licences for the same to be contrary to law. By the 22 *Geo. 3. c. 47.* no one shall keep an office for the sale of tickets in the public lottery without a licence from the stamp-office, under a penalty of 100*l*. And if any person shall sell the chance or share of a ticket for less time than the whole time of drawing, or shall insure for or against the drawing of any ticket, or shall receive any money to return money or goods upon any contingency depending upon the tickets in the lottery, he shall forfeit 50*l*. And by the 27 *Geo. 3. c. 1.* persons guilty of any of the preceding offences may also be proceeded against as rogues and vagabonds, under the vagrant act ; but if they are convicted as vagabonds, they are discharged from the pecuniary penalties. And no person shall sell any share less than a sixteenth, or without a stamp, under a penalty of 50*l*. But the owner of a whole ticket may insure his ticket with a licensed lottery-office keeper, so as to indemnify himself, and receive its value only. The insurance must be made for the whole remaining time of the drawing of the lottery, and in the manner prescribed by the act. The penalties under these statutes must be sued for within six months in the courts of Westminster, and the defendant may be held to bail to the amount of 500*l*.

By the 42 *Geo. 3. c. 119.* all lotteries called little goes are declared to be public nuisances ; and if any one shall keep an office or place to exercise or expose to be played any such lottery, or any lottery whatever not authorized by parliament, or shall knowingly suffer it to be exercised or played at in his house, he shall forfeit 500*l*. and be deemed a rogue and vagabond. And if any person shall promise to pay any money or goods on any contingency relative to such lottery, or publish any proposal respecting it, he shall forfeit 100*l*.

LYON'S INN, is situate between Holywell-street and Wych-street, and is an appendage of the Inner Temple.

It is known to be a place of considerable antiquity, from the old books of the steward's accounts, which contain entries made in



the time of King Henry V. How long before that period it was an inn of chancery is uncertain.

Its government was formerly vested in a treasurer and twelve ancients. The gentlemen of the house were in commons three weeks in Michaelmas term, in other terms two. They paid 5*s.* for the reading weeks, and for the others 2*s.* 6*d.*; sold their chambers for one or two lives, and had mootings once in four terms.

This little inn, whose buildings at present exhibit evident marks of neglect and decay, consists of one small square only, and has chambers built on two sides, the windows of the northern range looking into Wych-street, and the others into the inn; the south side is formed by the old houses in Holywell-street.

It has a hall, which stands in the south-west corner of the court, and was formerly, when properly kept, a commodious handsome room; but it now appropriated to indifferent purposes.

The exterior is decorated with a handsome door-way, to which there is an ascent by a flight of stone steps and ballustrades: the roof terminates in a pointed pediment, in the midst of which is the armorial bearing of the society; a lion, in *alto relievo*, indifferently sculptured, and beneath, the date 1700.

MAIHEM, MAYHEM, or MAIM, signifies a corporeal wound or hurt, by which a man loseth the use of any member.

By the old common law, castration was punished with death, and other members with the loss of member for member; but of latter days, maihem was punishable only by fine and imprisonment.

If a man attack another with an intent to murder him, and he does not murder the man, but only maim him, the offence is nevertheless within the statute 22 and 23 *Car. 2. c. 1.* usually called the Coventry Act.

MAINTENANCE, is the unlawful taking in hand, or upholding of a cause or person: this offence bears a resemblance to barratry, being a person's intermeddling in the suit of another, by maintaining or assisting him with money, or otherwise, to prosecute or defend it. A man may maintain the suit of his near kinsman, servant, or poor neighbour, out of charity or compassion, without being guilty of maintenance.

By the common law, persons guilty of maintenance may be prosecuted by indictment, and be fined and imprisoned, or be compelled to make satisfaction by action, &c. and a court of record may commit a man for an act of maintenance done in the face of the court.

MAINPRISE, the taking or receiving a man into friendly custody that otherwise is or might be committed to prison, upon security given for his forthcoming at the day assigned.

MALICE, a formed design of doing mischief to another. Malice is of two kinds; express or implied. Malice express is, where one with a sedate deliberate mind doth kill another, which formed design is evidenced by external circumstances, discovering that inward intention; as lying in wait, antecedent menaces, former

grudges, and concerted schemes to do him some bodily harm. Malice implied is various; as where one voluntarily kills another without any provocation, or where one wilfully poisons another; in such like cases the law implies malice, though no particular enmity can be proved.

MANDAMUS, is a writ issuing in the king's name out of the court of king's bench, and directed to any person, corporation, or inferior court of judicature, commanding to some particular thing therein specified, as appertaining to their office and duty.

A writ of mandamus is an high prerogative writ, of a most extensive remedial nature, and may be issued, in some cases, where the injured party has also another more tedious method of redress, as in the case of admission or restitution to an office; but it issues in all cases where the party hath a right to have any thing done, and hath no other specific means of compelling its performance.

And this general jurisdiction and superintendency of the king's bench over all inferior courts, to restrain them within their bounds, and to compel them to execute their jurisdiction, whether such jurisdiction arises from a modern charter, subsists by custom, or is created by act of parliament, yet being *in subsidium justitiæ*, has of late been exercised in a variety of instances.

Mandamus was also a writ that lay after the year and a day, (where in the mean time the writ called *diem clausit extremum* had not been sent out,) to the escheator, commanding him to inquire of what lands holden by knight service the tenant died seised, &c.

Mandamus was also a writ to charge the sheriff to take into the king's hands all the lands and tenements of the king's widow, who, against her oath formerly given, marries without the king's consent.

MANOR, was a district of ground held by lords or great personages, who kept in their own hands so much land as was necessary for the use of their families, which were called *terre dominicales*, or demense lands, being occupied by the lord, or *dominus manerii*, and his servants. The other lands they distributed among their tenants, which the tenants held under divers service. The residue of the manor being uncultivated, was termed the lord's waste, and served for common of pasture to the lord and his tenants. All manors existing at this day must have existed as early as King Edward I.

MANSLAUGHTER. See HOMICIDE.

MANUFACTURERS AND MANUFACTURES. Various regulations have from time to time been framed by the legislature for the greater security of our manufacturers, and the preventing of tools and artizans from being sent out of the country. As almost every branch of manufacture is regulated by its peculiar laws, (which are too numerous and complex to admit of insertion here,) we annex the following general provisions which are applicable to every class of manufactures and manufacturers.

To prevent the transporting and seducing our artists to settle abroad, the 5 Geo. 3. c. 27. enacts, that all such persons as entice or



seduce them shall be fined 100*l.* and be imprisoned three months; and for the second offence shall be fined at discretion, and be imprisoned a year; and the artificers, so going into foreign countries, and not returning within six months after warning given them by the British ambassador where they reside, shall be deemed aliens, and forfeit all their lands and goods, and shall be incapable of any gift or legacy, and be deemed an alien, and out of the king's protection. By statute 23 *Geo. 2. c. 13.* the seducers incur, for the first offence, a forfeiture of 500*l.* for each artificer contracted with to be sent abroad, and imprisonment for twelve months; and for the second, 1000*l.* and are liable to two years' imprisonment; and by the same statute, (as also by the 14 *Geo. 3. c. 71.*) if any person exports any tools or utensils used in the silk, linen, cotton, or woollen manufactures, (except by 15 *Geo. 3. c. 5. s. 9.* stock cards not exceeding 4*s.* per pair, and spinners' cards not exceeding 1*s. 6d.* per pair, intended to be exported to North America.) he forfeits the same, and 200*l.* and the captain of the ship, having knowledge thereof, 100*l.* And if any captain of a king's ship, or officer of the customs, knowingly suffers such exportation, he forfeits 100*l.* and his employment, and is for ever made incapable of bearing any public office; and every person collecting such tools or utensils, in order to export the same, shall, on such conviction at the assizes, forfeit such tools, and also 200*l.*

By 21 *Geo. 3. c. 3.* if any person shall put on board any ship, not bound to any place in Great Britain or Ireland, or shall have in his custody, with intent to export, any engine, tool, or implement, used in the linen, cotton, woollen, or silk manufactures, he shall forfeit the same, and also the sum of 200*l.* and shall be imprisoned twelve calendar months, and till the forfeiture is paid.

And every captain and custom-house officer who shall knowingly receive the same, or take an entry of it, shall forfeit 200*l.* Provided that nothing herein shall extend to the preventing of woollen cards or stock cards from being exported to America.

By 22 *Geo. 3. c. 60.* if any person shall entice or encourage any artificer employed in printing calicoes, cottons, muslins, or linens, to leave the kingdom he shall forfeit 500*l.* and be imprisoned one year. And persons who export, or attempt to export, any engines or implements used in that manufacture, shall forfeit 500*l.* Captains of ships and custom-house officers conniving at these offences forfeit 100*l.* and become incapable of holding any office under the crown.

By 25 *Geo. 3. c. 67.* any person who entices or encourages an artificer in the iron or steel manufactures to leave the kingdom, shall forfeit 500*l.* and be imprisoned for one year. Persons who attempt to export the articles specified in the statute 26 *Geo. 3. c. 89.* shall forfeit 200*l.* and be imprisoned one year. And captains and custom-house officers conniving at the offence are subject to the same penalty, and become incapable of exercising any public employment.

Finally, by the 52 *Geo. 3. c. 130.* persons wilfully destroying any

building or engine whatsoever used in manufacturing, shall, on being lawfully convicted thereof, be guilty of felony, without benefit of clergy, and shall suffer death, as in cases of felony, without benefit of clergy.

And if after passing this act, any person or persons unlawfully, riotously, and tumultuously assembled together in disturbance of the public peace, shall demolish, or pull down, or begin to demolish or pull down, any such erection and building, or engine, or warehouse, such offender shall be guilty of felony without benefit of clergy, and shall suffer death accordingly.

The value of, or damage done to manufactories and machinery therein may be recovered, as under 1 *Geo. 1. c. 5. s. 3.*

But no person shall recover any damages by virtue of this act, unless he or they, by themselves or by their servants, within two days after such damage or injury done, shall give notice thereof unto some of the inhabitants of some town, village, or hamlet, near unto the place where any such fact shall be committed, and shall, within four days after such notice, give in his, her, or their examination upon oath, or the examination upon oath of his, her, or their servant or servants, that had the care of his or their erections, buildings, engines, or machinery so destroyed or damaged, before any justice of the peace of the county, liberty, or division where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he or they do know the person or persons that committed such fact, or any of them; and if upon such examination it be confessed that he or they do know the person or persons that committed the said fact, or any of them, that then he or they so confessing shall be bound by recognizance to prosecute such offender or offenders by indictment or otherwise, according to the law of this realm: provided also, that no person who shall sustain any such damage shall be thereby enabled to sue or bring any action against any inhabitants of any hundred where such offence shall be committed, except the party or parties sustaining such damage shall commence his or their action or suit within one year next after such offence shall be committed. and the notice hereby required may and shall be given in Scotland to the sheriff or steward depute or substitute of the county or stewardry where such fact shall happen to be committed, in order that such measures may be taken as the law of Scotland prescribes in such cases.

**MARKET.** The establishment of public marts, or places of buying and selling, with the tolls thereunto belonging, is enumerated as one of the king's prerogatives, and can only be set up by virtue of the king's grant, or by long and immemorial usage.

All sales and contracts of any thing saleable in markets overt, shall not only be good as between the parties, but binding also upon all persons having property therein.

In London every shop in which goods are exposed publicly to sale, is market overt for such things only as the owner professes to trade in: though if the sale be in the warehouse, and not publicly in



the shop, the property is not altered. But if goods are stolen from one, and sold out of the market overt, the property is not altered, and the owner may take them wherever he finds them.

If a man buy his own goods in a market, the contract shall not bind him, unless the property had been previously altered by a former sale.

MARRIAGE, is not only the lawful conjunction of man and wife, but also the interest of bestowing a ward or a widow in marriage.

Taking marriage in the light of a civil contract, the law treats it as it does all other contracts: allowing it to be good and valid in all cases where the parties, at the time of making it, were, in the first place, willing to contract; secondly, able to contract; and lastly, actually did contract in the proper forms and solemnities required by law.

By several statutes, a penalty of 100*l.* is inflicted for marrying any persons without banns or license. But by 26 *Geo. 2. c. 33.* if any person shall solemnize matrimony without banns or license obtained from some person having authority to grant the same, or in any other place than a church or chapel where banns have been usually published, unless by special license from the Archbishop of Canterbury, he shall be guilty of felony, and transported for fourteen years, and the marriage shall be void.

MARSHALSEA COURT, is a court of record originally instituted to hear and determine causes between the servants of the king's household, and others within the verge, and hath jurisdiction of things 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; but the court hath also power to try all personal actions, as debt, trespass, slander, trover, action on the case, &c. between party and party, the liberty whereof extends twelve miles about Whitehall.

The judges of this court are the steward of the king's household, and high marshal for the time being: the steward of the court, or his deputy, is generally an eminent counsel.

If a cause of importance is brought in this court, it is generally removed into the court of king's bench, or common pleas, by an *habeas corpus cum causâ.*

MASTERS AND SERVANTS. In London, and other places, the mode of hiring is by what is commonly called a month's warning, or a month's wages; that is, the parties agree to separate, on either of them giving to the other a month's notice for that purpose, or, in lieu thereof, the party requiring the separation to pay or give up a month's wages.

But if the hiring of a servant be general, without any particular time specified, it will be construed to be an hiring for a year certain; and, in this case, if the servant depart before the year, he forfeits all his wages.

And where a servant is hired for one year certain, and so from year to year, as long as both parties shall agree, and the servant

enter upon a second year, he must serve out that year, and is not merely a servant at will after the first year.

If a woman servant marry, she must nevertheless serve out her term, and her husband cannot take her out of her master's service.

If a servant be disabled in his master's service by an injury received through another's default, the master may recover damages for loss of his service.

And also a master may not only maintain an action against any one who entices away his servant, but also against the servant; and if without any enticement a servant leaves his master, without just cause, an action will lie against another who retains him with a knowledge of such departure.

A master has a just right to expect and exact fidelity and obedience in all his lawful commands; and to enforce this, he may correct his servant in a reasonable manner; but this correction must be to enforce the just and lawful commands of the master.

In defence of his master, a servant may justify assaulting another, and though death should ensue, it is not murder, in case of any unlawful attack upon his master's person or property.

Acts of the servant are in many instances deemed acts of the master; for as it is by indulgence of law that he can delegate the power of acting for him to another, it is just he should answer for such substitute, and that his acts being pursuant to the authority given him, should be deemed the acts of his master.

If a servant commit an act of trespass by command or encouragement of his master, the master will be answerable. But in so doing, his servant is not excused, as he is bound to obey the master in such things only as are honest and lawful.

If a servant of an innkeeper rob his master's guest, the master is bound to make good the loss.

Also, if a waiter at an inn sell a man a bad wine, by which his health is impaired, an action will go against the master; for his permitting him to sell it to any person is deemed an implied general command.

In like manner, if a servant be frequently permitted to do a thing by the tacit consent of his master, the master will be liable, as such permission is equivalent to a general command.

If a servant be usually sent upon trust with any tradesman, and he takes goods in the name of his master upon his own account, the master must pay for them: and so likewise if he be sent sometimes on trust, and other times with money; for it is not possible for the tradesman to know when he comes by the order of his master, and when by his own authority, or when with and without money.

But if a man usually deal with his tradesmen himself, or constantly pay them ready money, he is not answerable with what his servant may take up in his name, for in this case there is not, as in the other, any implied order to trust him.

Or if the master never had any personal dealings with the trades-



man, but the contracts have always been between the servant and the tradesman, and the master has regularly given his servant money for payment, of every thing had on his account, the master shall not be charged.

Or if a person forbid his tradesman to trust his servant on his account, and he continue to purchase upon credit, he is not liable.

The act of a servant, though he has quitted his master's service, has been held to be binding upon the master, by reason of the former credit given him on his master's account, and it not being known to the party trusting that he was discharged.

The master is also answerable for any injury arising by the fault or neglect of his servant when executing his master's business; but if there be no neglect or default in the servant, the master is not liable.

If a smith's servant lame a horse whilst shoeing him, or the servant of a surgeon make a wound worse, in both these cases an action for damages will lie against the master, and not against the servant. But the damage must be done whilst the servant is actually employed in his master's service, otherwise he is liable to answer for his own misbehaviour or neglect.

A master is likewise chargeable if his servant cast any dirt, &c. out of the house into the common street, and so for any other nuisance occasioned by his servants, to the damage or annoyance of any individual, or the common nuisance of his majesty's people.

A servant is not answerable to his master for any loss which may happen without his wilful neglect; but if he be guilty of fraud or gross negligence, an action will lie against him by his master.

A master is not liable in trespass for the wilful act of his servant, as by driving his master's carriage against another, done without the direction or assent of his master, no person being in the carriage when the act was done. But he is liable to answer for any damage arising to another from the negligence or unskilfulness of his servant acting in his employ.

If a servant retained for a year happens, within the time of his service, to fall sick, or be otherwise hurt or disabled in the service of his master, the master cannot put him away, nor abate any part of his wages for that time.

A master is not bound to give a servant a character, there being no legal obligation to that effect. But if he does give a character, he must take care to give a true one; though if the words are spoken in confidence, and without malice, no action lies; as where a mistress told a lady, inquiring after the character of a servant, that she was saucy and impertinent, and often lay out of her own bed, but was a clean girl, and would do her work well, notwithstanding the plaintiff proved that she was by this means prevented from getting a place. But had this been said without ground, and purely to defame, action would lie.

As masters are responsible for the acts of their servants, the legislature has wisely interposed to prevent them from being deceived by the giving of false characters to their servants. Accordingly

the 32 G. 3. c. 56. enacts, that if any person shall give a false character of a servant, or a false account of his former service; or if any servant shall give such false account, or shall bring a false character, or shall alter a certificate of a character, he shall, upon conviction before the justice of the peace, forfeit 20*l.* with 10*s.* cost. And if any servant will inform against an accomplice, he shall be acquitted.

MEMORY, time of, is ascertained by our law, from the time of the transference of King Richard the First to the holy land; and any custom may be destroyed by evidence of its non-existence in any part of that long period to the present time.

MERCHANT. Every one who buys and sells, is not to be denominated a merchant, but only he who traffics in the way of commerce by importation or exportation, or otherwise in the way of emption, vendition, barter, permutation, or exchange, and who makes it his living to buy and sell.

MILITIA, the national soldiery, the standing army of the nation. This valuable body of soldiers is raised, disciplined, and paid under various militia acts, the provisions of which cannot be here introduced, on account of their length, and of the continual modifications they are receiving under the authority of parliament. The following persons, by reason of their rank or officers are exempt from serving in the militia, viz.—Peers; commissioned officers in the forces, castles, or forts; officers on half-pay; non-commissioned officers or privates in the forces; commissioned officers serving, or who have served four years in the militia, members of the universities, clergymen, licensed teachers, whose grant of worship was licensed for twelve months before the annual meeting in October; constables and peace officers; articulated clerks and apprentices; seamen; persons mustered at the dock yards, at the Tower, Woolwich, the gun wharfs at Portsmouth, the powder mills; freemen of the watermen's company; poor men who have more than one child born in wedlock, are not liable to serve or find a substitute; nor shall any person who shall have served personally, or found a substitute, be liable, until, by rotation, it comes to his turn.

MILL. From and after July 1, 1796, every miller shall have in his mill, a true balance with proper weights; and every miller in whose mill shall be found no balance or weights, shall forfeit not exceeding 20*s.*

Every person may require the miller to weigh, in his presence, the corn before it shall be ground, also after it shall be ground, and if he refuse, he shall forfeit not exceeding 40*s.*

Every miller shall, if required, deliver the whole produce of the corn, allowing for the waste in grinding, and toll, when toll is hereinafter allowed to be taken, on pain to forfeit not exceeding 1*s.* per bushel, and treble the value of the deficiency. Where toll is allowed to be taken, it shall be deducted before the corn is put into the mill.

From and after June 1, 1796, no miller shall, under the penalty



of 5*l.* take any part of the corn, or of the produce for toll, but in lieu thereof he shall be entitled to demand payment in money.

But where the party shall not have money to pay for grinding, the miller, with his consent, may take such part of the corn, as will be equal to the money price, expressed in their table of prices for grinding. Also nothing in this clause shall extend to the ancient mills, called soke mills, or such others where the possessors are bound to grind for particular persons, or within particular districts, and to take a fixed toll.

From and after June 1, 1796, every miller shall put up in his mill, a table of prices or of the amount of toll at his mill, on pain of forfeiting not exceeding 20*s.*

**MINES.** By the old common law, if gold and silver be found in mines of base metal, the whole was said to be a royal mine, and belonged to the king; but by statutes 1 and 5 *W. c.* 30. and 6. no mine of copper, tin, iron, or lead, shall be deemed a royal mine, notwithstanding gold or silver may be extracted from them in any quantities.

Coal mines by name are rateable to the poor; but other mines are not.

By 25 *G. 2. c.* 10. entering any mines of black lead, with intent to steal, shall be deemed felony, and the offender shall be transported. Returning before the time, felony without clergy, and a certificate of the former conviction shall be sufficient proof thereof. The receivers of lead knowing the same to be unlawfully taken, shall be deemed guilty of felony.

**MISNOMER,** the using of one name for another.

Where a person is described, so that he may not be certainly distinguished and known from other persons, the omission, or in some cases the mistake of the name shall not avoid the grant.

If the christian name be wholly mistaken, this regularly fatal to all legal instruments, as well declarations and pleadings, as grants and obligations.

The mistake of the surname does not vitiate, because there is no repugnancy that a person shall have different surnames; and therefore if a man enter into an obligation by a particular name he may be impleaded by the name in the deed, and his real name brought in by an *alias*, and then the name in the deed he cannot deny, because he is estopped to say any thing contrary to his own deed.

But a mistake in the name of a corporation, in their leases and grants is material, and will vitiate.

**MONEY,** is a material representing a fixed and certain value, generally made of metal, struck with a peculiar mark, indicating its weight, fineness, and the value for which it passes.

No person is obliged to take in payment any money which is not lawful metal, that is, of silver and gold, except for sums under sixpence.

But it was decided in hilyary term, 1790, that banks notes are considered as money, and therefore a proper tender in payment.

By the 52 G. 3. c. 64. reciting the 30 G. 2. c. 24. (for punishing persons obtaining money or goods under false pretences) it is enacted that persons obtaining by false pretences money or goods, or securities for money, and also persons sending threatening letters to accuse persons of having committed crimes with an intent to extort money or goods, are respectively declared offenders against law and the public peace, and shall be punished in the same manner as if they had knowingly and designedly obtained such money or goods by false pretences.

MONOPOLY, is an allowance by the king, by his grant, commission, or otherwise, to any person, or persons, bodies politic, or corporate, or of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before, or hindered in their lawful trade.

But it seems that the king's charter, empowering particular persons to trade to and from such place is void, so far as it gives such persons an exclusive right of trading, and debarring all others; and it seems now agreed, that nothing can exclude a subject from trade but an act of parliament.

MORTGAGE, signifies a pawn of land or tenement, or any thing immoveable, laid or bound for money borrowed, to be the creditor's for ever, if the money be not paid at the day agreed upon; and the creditor holding land and tenements upon this bargain, is called tenant in mortgage. He who pledgeth this pawn or gage, is called the mortgager, and he who taketh it, the mortgagee.

The last and best improvement of mortgages seem to be that in the mortgage deed of a term for years, or in the assignment thereof, the mortgager should covenant for himself and his heirs, that if default be made in the payment of the money at the day, that then he and his heirs will, at the costs of the mortgagee and his heirs, convey the freehold and inheritance of the mortgaged lands to the mortgagee and his heirs, or to such person or persons (to prevent merger of the term) as her or they shall direct and appoint: for the reversion, after a term (of fifty or a hundred years, being little worth, and yet the mortgagee for want thereof continuing but a term, and subject to forfeiture, &c. and not capable of the privileges of a freeholder; therefore when the mortgager cannot redeem the land, it is but reasonable the mortgagee should have the whole interest and inheritance of it, to dispose of it as absolute owner.

Although after breach of the condition, an absolute fee-simple is vested at common law in the mortgagee; yet a right of redemption being still inherent in the land, till the equity of redemption is fore-closed, the same right shall descend to, and is invested in such persons as have a right to the land, in case there had been no mortgage or incumbrance whatsoever; and as an equitable performance as effectually defeats the interests of the mortgagee, as the legal performance doth at common law, the condition still



hanging over the estate, till the equity is totally foreclosed; on this foundation it hath been held, that a person that comes in under a voluntary conveyance may redeem a mortgage; and though such right of redemption be inherent in the land, yet the party claiming the benefit of it, must not only set forth such right, but also shew that he is the person entitled to it.

But if a mortgage be forfeited, and thereby the estate absolutely vested in the mortgagee at the common law, yet a court of equity will consider the real value of the tenements compared with the sum borrowed. And if the estate be of greater value than the sum lent thereon, they will allow the mortgager at any reasonable time, to recal or redeem the estate, paying to the mortgagee his principal, interests, and costs. The reasonable advantage, allowed to the mortgagers, is called the equity of redemption.

It is a rule established in equity, analagous to the statute of limitation, that after twenty years' possession of the mortgagee, he shall not be disturbed, unless there be extraordinary circumstances; as in the case of *femes covert*, infants, and the like.

Where, however, the mortgager commits a fraud upon the mortgagee by concealing former incumbrances, he loses his equity of redemption, and the honest mortgagee (for such only can have this benefit, 2 *Vern* 59.) acquires an absolute estate and interest in the land mortgaged. By the 4 and 5 *W. and M. c.* 16. therefore if any person shall borrow any money, and for payment thereof, or for any other valuable consideration, shall voluntarily give a judgment, statute, or recognizance, and shall afterwards borrow any other sum of another, or for other valuable consideration become indebted to such other, and for securing the repayment and discharge thereof shall mortgage lands, or any part thereof, to the second lender, &c. or to any other in trust for, or to the use of such second lender, &c. and shall not give notice to the said mortgagee, of such previous judgment, &c. in writing under his hand, before the execution of the said mortgage or mortgages; unless such mortgager or his heirs, upon notice given by the mortgagee, his heirs, &c. in writing, &c. attested by two witnesses, of any such former judgment, &c. shall within six months pay off the said judgment, &c. and all the interest and charges, and procure the same to be vacated, &c. then the mortgager or his heirs, &c. shall have no benefit or remedy against the said mortgagee or his heirs, &c. in equity or elsewhere, for redemption; but the mortgagee shall hold the lands, &c. for such estate and term as was granted to the mortgagee, against the mortgager, and all persons claiming under him, freed from equity of redemption, &c. Further, if any person who shall once mortgage lands for valuable consideration, shall again mortgage the same lands, or any part thereof, to any other person for valuable consideration, (the former mortgage being in force,) and shall not discover to the second mortgagee the former mortgage, in writing under his hand, such mortgager, his heirs, &c. shall have no relief or equity of redemption against the second or after mortgagee, &c. And such

second or third mortgagees may redeem any former mortgages upon payment of the principal, debt, interest, and costs of suit, to the proper mortgagee, &c. But this statute does not bar any widow of any mortgagee from her dower, who did not legally join with her husband in such mortgage, or otherwise lawfully exclude herself.

By 7 G. 2. c. 20. in actions concerning mortgages, or ejectments, no suit to foreclose being depending, the mortgager's tender of principal, interest, and costs in court, shall be deemed full satisfaction, and the court may compel the mortgagee to surrender. On bills to foreclose, the court, on defendant's request, may proceed to a decree before a regular hearing. This is not to extend to cases where the right of redemption is controverted, or the money due not adjusted, or to prejudice any subsequent mortgage.

MORTMAIN, signifies an alienation of lands and tenements, to any guild, corporation or fraternity, and their successors, as bishops, parsons, vicars, &c. which may not be done without the king's license, and the lord of the manor, or of the king alone, if it be immediately holden of him.

But in order to prevent any imposition in respect to the disposal of lands to charitable uses, which might arise in a testator's last hours, and in some measure from political principles to restrain devises in mortmain, or the too great accumulation of land in hand, where it lies dead, and not subject to change possessions, it is provided by stat. 9 G. 2. c. 36. (called the statute of mortmain) that no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal, or incorporeal, whatsoever, nor any sum, or sums of money, goods, chattels, stocks in the public funds, securities for money, or other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, limited, or appointed by will, to any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever, in trust, or for the benefit of any charitable use whatsoever; but such gift shall be by deed indented, sealed and delivered in the presence of two or more credible witnesses, twelve calendar months at least, before the death of such donor, and be enrolled in the high court of chancery within six calendar months after execution, and the same to take effect immediately after the execution for the charitable use intended, and be without any power of revocation, reservation, or trust for the benefit of the donor. And all gifts and appointments whatsoever, of any lands, tenements, or other hereditaments, or of any estate, or interest therein, or of any charge or encumbrance, affecting or to affect any lands, tenements, or hereditaments, any personal estate, to be laid out in the purchase of any lands, tenements, or hereditaments, or any estate, or interest therein, or of any charge or encumbrance affecting or to affect the same, to or in trust for any charitable use whatsoever, made in any other manner than is directed by this act, shall be absolutely null



and void. But the two universities, their colleges, and the scholars upon the foundation of the colleges at Eton, Westminster, and Winchester, are excepted out of this act; but with this proviso, that no college shall be at liberty to purchase more advowsons than are equal in number to one moiety of the fellows or students upon the respective foundations.

**MURDER.** See **HOMICIDE.**

**MUTE.** If any person being arraigned on any indictment or appeal for felony, or on any indictment for piracy, shall upon such arraignment stand mute, or will not answer directly to the felony, or piracy, he shall be convicted of the offence, and the court shall thereupon award judgment and execution, in the same manner as if he had been convicted by verdict or confession; and by such judgment shall have all the same consequences as a conviction by verdict or confession.

And the law is the same with respect to an arraignment for petit treason or larceny; for before this act, persons standing mute in either of these cases, were to have the like judgment as if they had confessed the indictment. This horrid punishment, however, is now become obsolete.

**NATURALIZATION,** is when an alien born, is made the king's natural subject.

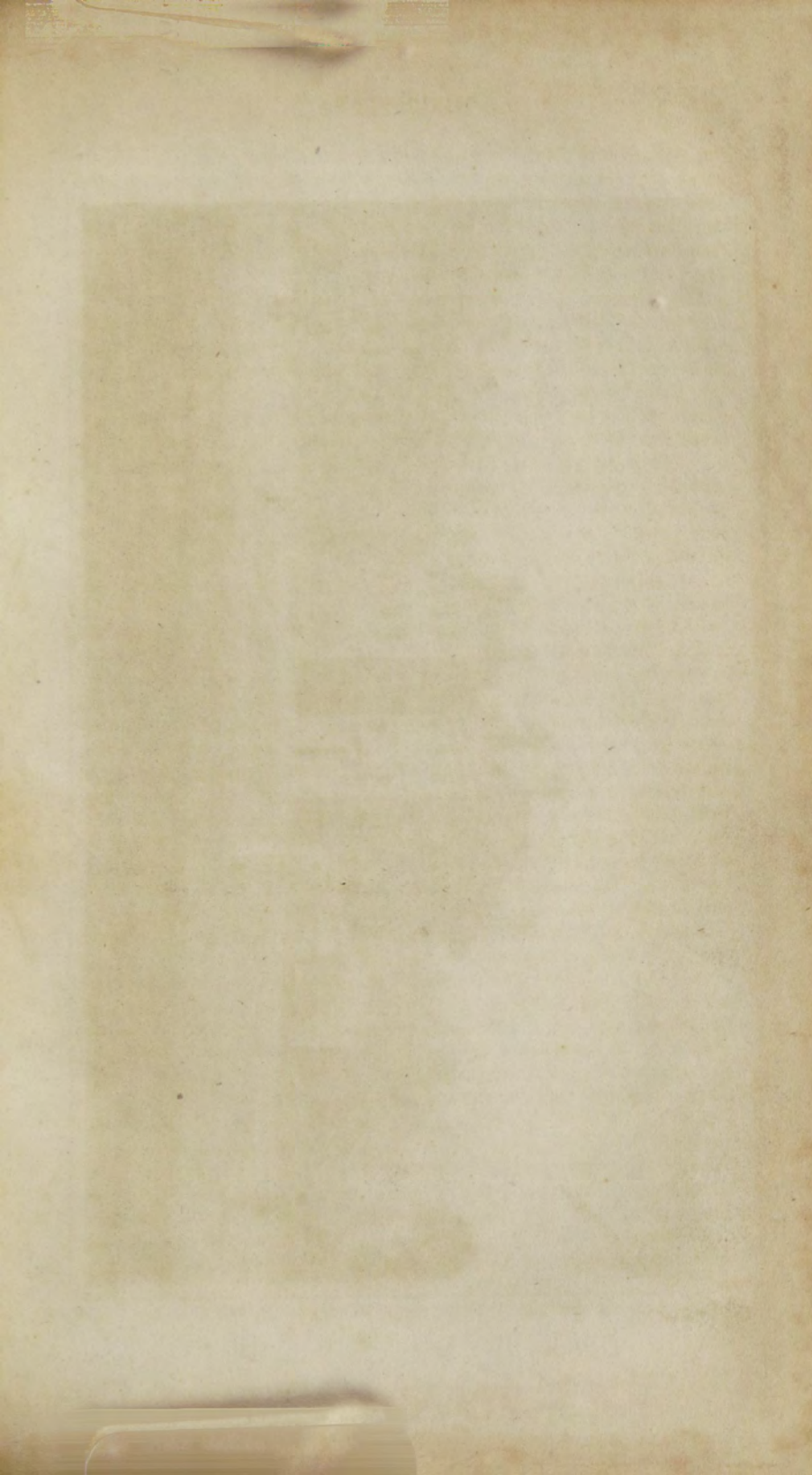
Hereby an alien is put in the same state as if he had been born in the king's allegiance, except only, that he is incapable of being a member of the privy council, or parliament, and of holding any office or grant. No bill for a naturalization, can be received in either house of parliament, without such disabling clause in it; nor without a clause disabling the person from obtaining any immunity in trade thereby, in any foreign country, unless he shall have resided in Britain seven years next after the commencement of the session in which he is naturalized. Neither can any person be naturalized, or restored in blood, unless he have received the sacrament within one month before the bringing in of the bill, and unless he also take the oaths of allegiance and supremacy in the presence of the parliament.

**NECESSITY.** The law charges no man with default where the act is compulsory, and not voluntary, and where there is not a consent and election; and therefore if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason, as, in presumption of law, man's nature cannot overcome, such necessity carries a privilege in itself.

Necessity is of three sorts; necessity of conservation of life, necessity of obedience, and necessity of the act of God, or of a stranger.

And *first, of conservation of life:* if a man steal viands to satisfy his present hunger, this is no felony nor larceny.

The *second necessity is of obedience:* and therefore where baron and feme commit a felony, the feme can neither be principal, nor accessory, because the law intends her to have no will in regard of the subjection and obedience she owes her husband.







W. H. W. IN.

The *third* necessity is of *the act of God or of a stranger*; or if a man be particular tenant for years of an house, and it be overthrown, by thunder, lightning, and tempest, in this case, he is excused of waste.

NEWS. See FALSE NEWS.

NON-CONFORMITY *to the Established Church.* The law relative to non-conformity underwent a very important change, by the passing of the statute 52 G. 3. c. 155. By this act, the 13 and 14 Car. 2. c. 1. the 17 Car. 2. c. 2. and the 22 Car. 2. c. 1. are respectively repealed.

No congregation or assembly for religious worship of protestants (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting shall be had) shall be permitted, unless the place of such meeting, if the same shall not have been duly certified and registered under any former act or acts of parliament relating to registering places of religious worship, shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, riding, division, city, town, or place in which such meeting shall be held; and all places of meeting so certified to the bishop or archdeacon's court, shall be returned by such court once in each year to the quarter sessions of the county, riding, division, city, town, or place; and all places of meeting which shall be so certified to the quarter sessions of the peace shall be also returned once in each year to the bishop or archdeacon; and all such places shall be registered in the said bishop's or archdeacon's court respectively, and recorded at the said general or quarter sessions; the registrar or clerk of the peace whereof respectively is required to register and record the same; and the bishop or registrar or clerk of the peace to whom any such place of meeting shall be certified under this act shall give a certificate thereof to such person or persons as shall request or demand the same, for which there shall be no greater fee or reward than 2s. 6d.; and every person who shall knowingly permit or suffer any such congregation or assembly as aforesaid to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit for every time any such congregation or assembly shall meet contrary to the provisions of this act, not exceeding 20l. nor less than 20s. at the discretion of the justices who shall convict for such offence.

And every person who shall teach or preach in any congregation or assembly as aforesaid, in any place, without the consent of the occupier thereof, shall forfeit for every such offence not exceeding 30l. nor less than 40s. at the discretion of the justices who shall convict for such offence.

Every person who shall teach or preach at, or officiate in, or shall resort to any congregation or congregations, assembly or assemblies for religious worship of protestants, whose place of



meeting shall be duly certified according to the provisions of this act, or any other act or acts of parliament relating to the certifying and registering of places of religious worship, shall be exempt from all such pains and penalties under any act or acts of parliament relating to religious worship, as any person who shall have taken the oaths, and made the declaration prescribed by the 1 *W.* and *M. c.* 18, or any act amending the said act, is by law exempt, as fully and effectually as if all such pains and penalties, and the several acts enforcing the same, were recited in this act, and such exemptions as aforesaid were severally and separately enacted in relation thereto.

Every justice before whom any person shall make and take and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed the same, a certificate thereof under the hand of such justice, the fee of such certificate to be 2s. 6d. and the certificate itself conclusive evidence, that the party named therein has made and taken the oaths and subscribed the declaration in manner required by this act.

Dissenting teachers having taken the oaths, &c. are exempt from the civil offices specified in 1 *W.* and *M. c.* 18. and also from the militia and local militia.

The penalty on producing a false certificate is 50l. recovered in any court of record by the informer.

The doors of places wherein religious assemblies are held, are not to be bolted or barred, on pain of forfeiting not more than 20l. nor less than 40s. at the discretion of the justices convicting for such offence.

If any person wilfully and maliciously or contemptuously disturb or disturb any meeting, assembly or congregation of persons assembled for religious worship, permitted or authorized by this act, or any former act or acts of parliament, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such offender, upon proof thereof before any justice, by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of 50l. to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of 40l.

But nothing in this act shall affect or prejudice the ecclesiastical jurisdiction of the church of England and Ireland.

Nothing in this act shall extend to the people called Quakers, nor to any of their meetings for religious worship; or in any manner alter or repeal or affect any act other than and except the 13 and 14 *Car. 2. c. 1.* and 22 *Car. 2. c. 1.* herein before repealed, relating to the people called Quakers, or relating to any assemblies or meetings for religious worship held by them.

Offenders are to be convicted before two or more justices, and

all forfeitures to be levied by distress. And in case of no sufficient distress whereby to levy the penalties, or any or either of them imposed by this act, any justice before whom the offender shall be convicted, may commit him to prison for such time not exceeding three months, as the said justice shall think fit.

In case any person who shall hereafter be convicted of any of the offences punishable by this act, shall conceive himself to be aggrieved by such conviction, such person may appeal to the general or quarter sessions of the peace holden next after such conviction, giving unto the justices before whom such conviction shall be made, notice in writing within eight days after any such conviction, of his, or their intention to appeal; and the said justices in their said general or quarter sessions shall and may proceed to hear and determine the matter of such appeal, and to make such order therein, and to award such costs to be paid by and to either party, not exceeding 40s. as they in their discretion shall think fit.

All penalties under this act must be sued for and prosecuted within six months.

If any action or suit be commenced against any person for any thing done in pursuance of this act, every such action shall be commenced within three months next after the fact committed, and not afterwards, and shall be brought in the county wherein the cause of action shall have accrued, and not elsewhere; and the defendant or defendants in such action may plead the general issue, and give this act and the special matter in evidence on any trial to be had thereupon, and that the same was done in pursuance and by authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time so limited for bringing the same, or shall be brought in any other county, city, or place, then and in such case the jury shall find for such defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have or may recover treble costs, and may have the like remedy for the same, as any defendant or defendants hath or have for costs of suit in other cases by law.

NOTES, PROMISSORY. See BILLS OF EXCHANGE.

NOTICE, is the making something known, that a man was or might be ignorant of before; and it produces divers effects; for by it the party that gives the same, shall have some benefit, which otherwise he should not have had: and by this means, the party to whom the notice is given, is made subject to some action or charge, that otherwise he had not been liable to, and his estate in danger of prejudice.

The plaintiff and defendant are both bound at their peril to take notice of the general rules of the practice of the court; but if there be a special particular rule of court made for the plaintiff,



or for the defendant, he for whom the rule is made, ought to give notice of this rule to the other; or else he is not bound generally to take notice of it, nor shall be in contempt of the court, although he do not obey it.

**NOTICES TO QUIT.** See **LANDLORD.**

**NUNCUPATIVE WILL.** See **WILLS.**

**NUISANCE**, signifies generally an thing that worketh hurt, inconvenience, or damage, to the property or person of another.—Nuisances are of two kinds; public, or private nuisances, and either affect the public or the individual. The remedy for a nuisance is by action on the case for damages. Every continuance of a nuisance, is a fresh nuisance, and a fresh action will lie.

**OFFENCE**, is an act committed against any law. Offences are either capital or not capital. Capital offences are those for which an offender shall lose his life; not capital where the offender may lose his lands and goods, be fined or suffer corporal punishment, or both, but not loss of life.

High treason, petit treason, and felony, constitute capital offences; other offences, not capital, include the remaining part of criminal offences or pleas of the crown, and come under the denomination of misdemeanours.

**OFFERINGS.** Oblations and offerings partake of the nature of tithes, and all persons who by the laws of this realm ought to pay their offerings, shall yearly pay to the parson, vicar, proprietary or their deputies, or farmers of the parishes where they dwell, at such four offering days as heretofore within the space of four years last past hath been accustomed, and in default thereof, shall pay for the said offerings at Easter following.

**OFFERINGS OF THE KING.** Offerings made at the holy altar by the king and queen, and distributed among the poor by the dean of the chapel, on twelve great festivals of the church, which days are called offering days.

**OFFICE**, is that function, by virtue whereof a person hath some employment in the affairs of another.

An office is a right to exercise any public or private employment, and to take the fees and emoluments thereunto belonging, whether public as those of magistrates, or private as of bailiffs, receivers, &c.

The stat. 5 and 6 *Ed. 6. c. 16.* declares all securities given for the sale of offices unlawful. And if any person shall bargain or sell, or take any reward, or promise of reward, for any office, or the deputation of any office, concerning the revenue, or the keeping of the king's castles, or the administration and execution of justice, unless it be such an office as had been usually granted by the justices of the king's bench and common pleas, or by justices of assize, every such person shall not only forfeit his right to such office, or to the nomination thereof, but the person giving such reward, &c. shall be disabled to hold such office.

But it has been decided, that where an office is within the statute, and the salary certain, if the principal make a deputy, reserving by

bond a less sum out of the salary, it is good; or, if the profits are uncertain, reserving a part, as half the profits, it is good; for the fees still belong to the principal, in whose name they must be sued for; but where a person, so appointed, gives a bond to the principal to pay him a sum certain, without reference to the profits, this is void under the statute.

To offer money to any officer of state, to procure the reversion of an office in the gift of the crown, is a misdemeanour at common law, and punishable by information; and even the attempt to induce him under the influence of a bribe, is criminal, though never carried into execution.

Any contract to procure the nomination to an office, not within the stat. 6 Ed. 6. is defective on the ground of public policy, and the money agreed to be given, is not recoverable.

ORIGINAL, in the court of king's bench, the usual original writ issued in the actions; as 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 actions: but to arrest and sue a party to outlawry, it is used in both courts.

OVERSEERS OF THE POOR. 1. *Appointment of overseers.* The proper number of overseers of the poor for each parish, must be duly appointed under the hands and seals of, and sworn before, two justices of the peace, one whereof must be of the quorum.

The overseers thus appointed, and taking on them the office, shall, within fourteen days, receive the books of assessments, and of accounts from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears.

And shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of such parents who shall not, by the said overseers, be thought able to keep or maintain them, and using no ordinary and daily trade of life to get their living by.

Justices neglecting to appoint overseers for any place, where no nomination has been made, forfeit 5*l.* for relief of the poor, to be levied by warrant from the sessions.

The following persons are exempt from serving the office of overseers, either at law or by virtue of various statutes, viz. justices of the peace, (where any other sufficient persons can be found, 1 Burr. 245) apothecaries, attornies and officers of the courts of law at Westminster, barristers, dissenting ministers duly licensed, Roman Catholic clergymen duly qualified, militia men, physicians and surgeons, revenue officers, persons apprehending and prosecuting to conviction burglars, shop-lifters, and horse-stealers, and (it should seem according to Hawkins, vol. II. c. 10. s. 39.) servants of members of parliament. Persons who conceive themselves to be aggrieved by any act of appointment by the justices, may appeal to the next quarter sessions, whose decision shall be final,

2. *Overseers' accounts.* By the 43 Eliz. c. 2. the churchwardens



and overseers shall, within four days after the end of their year, and after other overseers nominated, make and yield up to two justices (one to be of the quorum) true accounts of all sums received, or rated and assessed and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office; and such money as shall be in their hands shall pay over to the new churchwardens and overseers. And the subsequent churchwardens and overseers, by warrant from two such justices, may levy, by distress and sale of the offender's goods, the money or stock which shall be behind upon any account so made; and in defect of such distress, such two justices may commit him or them to the common gaol, there to remain until payment of the said sum or stock. And such two justices may commit to the said prison every one of the said churchwardens and overseers which shall refuse to account, there to remain, without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands.

By the stat. 50 *Geo. 3. c. 49.* reciting 43 *Eliz. c. 2. s. 2. 4.* and 17 *Geo. 3. c. 38.* and that it was expedient that two or more justices should be empowered to examine and correct, and to allow and approve accounts of overseers and churchwardens, before the same should be signed and attested; it is enacted, that all accounts of churchwardens and overseers of the poor shall be submitted by them to two or more justices at a special sessions held under the last recited act, and in case such churchwardens and overseers, or any of them, shall refuse or neglect to make and yield up, or to submit such account, or to verify the same by oath, or to deliver over to their successors, within ten days from the signing and attesting such accounts, any goods, chattels, or other things, which, on the examination and allowance of such account, in manner aforesaid, shall appear to be remaining in the hands of such churchwardens or overseers, it shall and may be lawful for any two or more justices of the peace to commit him, or them, to the common gaol, until he or they shall have made and yielded such account, and verified the same, as aforesaid, or shall have delivered over such goods, chattels, and other things, which shall appear to be so remaining in his or their hands, as aforesaid; and in case such churchwardens and overseers or any of them, shall refuse or neglect to pay their successors within fourteen days from the signing and attesting such account, any sum of money or arrearages which, on the examination and allowance of such account, in manner aforesaid, shall appear or be found due and owing from such churchwardens or overseers, or any of them, or remaining in their hands, it shall be lawful for the subsequent churchwardens and overseers, by warrant from any two or more justices of the peace, to levy any such sum of money by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress, it shall be lawful for any such two justices of the peace to commit the

offender to the common gaol of the county, there to remain without bail or mainprize, until payment of such sum of arrearages as aforesaid.

Provided that if such churchwardens or overseers shall feel aggrieved by the disallowance or reduction of any such charges or payments, and be desirous of appealing against any order in that respect made by any such two or more justices of the peace, it shall be lawful for him or them to enter an appeal against such order at the next general or quarter sessions to be holden next after the tenth day from the making of such order, he or they having first paid or delivered over to the succeeding churchwardens and overseers such sum of money, goods, chattels, and other things, as on the face of the account which shall have been submitted by him or them to such two or more justices, in manner aforesaid, shall appear and be admitted to be due and owing from him or them, or remaining in his or their hands, and having also entered into a recognizance, before one or more such justice or justices, with two sufficient securities, to be approved of by such justice or justices before whom such recognizances shall be acknowledged, in not less than double the sum or value in dispute, to enter such appeal at such next general or quarter sessions, and abide by such order as shall at that or any subsequent sessions be made on such appeal; and it shall be lawful for the justices of the peace assembled at such general or quarter sessions, on proof of the matters aforesaid, and on the production of such recognizance, and proof of the same having been duly entered into, to adjourn such appeal, if they shall see occasion, or to hear the same, and to examine into and to confirm or reverse such disallowance or reduction in the whole, or in part, as to such justices at such sessions shall seem just; and in any such case, the said justices at such sessions may (if they shall think fit) make an order that such churchwardens and overseer shall have the costs by them incurred upon any such appeal defrayed out of the poor rates of the parish or place; and the order of the general quarter sessions, in execution of the powers given to them by this act, shall be binding on all parties.

But nothing herein contained shall take away any power of appeal against any such account, by any other person entitled to appeal against the same by virtue of the said recited acts, or either of them.

And every mayor, bailiff, or other head officer, of every town and place corporate and city in Great Britain, or any two magistrates of such town, or place corporate, or city, being justice or justices of peace respectively, shall have the same authority by virtue of this act within the limits of and precincts of their jurisdictions as is by this act limited, prescribed, or appointed to justices of the peace of the county, or any two or more of them, for the execution of this act; subject, nevertheless, to an appeal to the general or quarter sessions in every such town, or place corporate, or city respectively, as aforesaid; provided that in any town, or place corporate, or city, where there are not four justices of the peace,



it shall and may be lawful for any person, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division, wherein such town, or place corporate, or city, is situate.

The proceedings of quarter sessions are final.

Nothing in this act contained shall extend or apply to the accounts of any churchwarden or overseer of the poor in any parish or place where, by the provisions of any act relating to the poor of such parish, or place, or by the construction of any such act, such churchwardens or overseers are exempted from rendering the accounts required by the herein-before recited acts of the 43d year of the reign of her late Majesty Queen Elizabeth, and of the 17th year of the reign of his late Majesty King George II. or either of them; and nothing in this act contained shall extend to the city of London.

Nor to alter or repeal any of the provisions or regulations contained in the said recited acts, 43 *Eliz.* or 17 *Geo. 2.* or either of them, other than except only such provisions or regulations as are expressly mentioned in this act, and so far as the same are expressly amended or altered by this act.

By 17th *Geo. 2. c. 38.* if any person shall find himself aggrieved by, or have any material objection to such account as aforesaid, or any part thereof, or shall find himself aggrieved by any neglect, act, or thing done or omitted by the churchwardens, overseers, or justices, such person giving reasonable notice to the churchwardens or overseers, may appeal to the next general or quarter sessions for the county, riding, division, corporation, or franchise; and the justices there assembled shall receive such appeal, and hear and finally determine the same.

But if it appear to the said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same.

And the justices may award to the party for whom such appeal shall be determined, costs, in the same manner as in appeals concerning settlements.

And in all corporations or franchises which have not four justices, persons may appeal, if they think fit, to the next general or quarter sessions of the county, riding, or division.

3. *Indemnity given to overseers in the execution of their duty.*— By 43 *Eliz. c. 2.* if any action of trespass, or other suit, shall be brought against any person for any thing done by authority of this act, the defendant may either plead not guilty, or make avowry, cognizance, or justification for the taking of the distresses, making of sale, or other thing done by vitrue of this act, alleging that the thing whereof the plaintiff complained was done by authority of this act, without expressing any other matter. To which the plaintiff shall reply, That the defendant did the act of his own wrong, without any such cause alleged by the said defendant. And after

such issue tried for the defendant, or nonsuit of the plaintiff, after appearance, the same defendant to recover treble damages, with his costs, and that to be assessed by the same jury, or writ to inquire of the damages.

Further, by the 7 *Jac.* 1. c. 5. if any action shall be brought against any justice of peace, mayor, or bailiff of any city or town corporate, headborough, or constable, (or against any churchwarden, or persons called sworn men executing the office of churchwarden, or any overseer of the poor, or others, which, in their aid and assistance, or by their commandment, shall do any thing concerning their office,) every such person may plead the general issue, not guilty, and give the special matter in evidence. And if the verdict shall pass with him, or the plaintiff become nonsuit, the judge before whom the matter shall be tried, shall, by virtue of this act, allow unto the defendant double costs.

By 34 *Geo.* 2. c. 41. no action shall be brought against any constable, headborough, or other officer, or any person acting in his aid, for any thing done in obedience to any warrant of any justice of the peace, until demand hath been made at the usual place of his abode by the party, or his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: and if after compliance therewith any action shall be brought without making the justice defendant, or producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in such justice, and if such action be brought jointly against such justice, and such officer or person acting in his aid, then, on proof of such warrant, the jury shall find for such officer, or person so acting, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such a manner as to include such costs as such plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid.

And where the plaintiff in such action against any justice shall obtain a verdict, if the judge before whom the cause shall be tried shall in open court certify, on the back of the record, that the injury was wilfully and maliciously committed, the plaintiff shall have double costs.

But no action shall be brought against any justice, or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

4. *Punishment of overseers for misbehaviour in the discharge of their office, and for neglect of duty.*—As the legislature has thus wisely provided for the security and protection of overseers in the proper execution of their office, so it has effectually guarded against their mismanagement of the trust delegated to them for the benefit of the poor. Thus the 43 *Eliz.* c. 2. enacts that if the churchwardens and overseers be negligent in their office, or in the execution of the orders made by and with the assent of the justices of the



peace, or any two of them, one to be of the quorum, they shall forfeit for every such default 20s. to be employed to the use of the poor of the parish, and towards a stock and habitation for them, and other necessary uses; and to be levied by the churchwardens and overseers, or one them, by warrant from any two justices, one to be of the quorum, or the mayor, alderman, or head officer, of any city or place corporate, by distress and sale; or in defect thereof, it shall be lawful for any two such justices, &c. to commit the offender to prison till the forfeitures be paid.

By 17 Geo. 3. c. 38. if any churchwarden, overseer of the poor, or other officer of any parish, township, or place, shall neglect to obey the directions of that act, where no penalty is provided, or act contrary thereto, he shall for every such offence, on oath thereof made, within two calendar months after the offence, before any justices, forfeit for the use of the poor a sum not exceeding 5l. nor less than 20s. to be levied by distress and sale of the offender's goods, by warrant from such justice; which sum shall be paid to some churchwarden or overseers of such parish or place.

By 33 Geo. 3. c. 55. it shall be lawful for two justices, at any special or petty sessions, upon complaint upon oath of any neglect of duty, or of any disobedience of any lawful warrant or order of any justice by any overseer or other parish officer, (such overseer or other officer having been duly summoned to appear and answer such complaint,) to impose, upon conviction, any reasonable fine, not exceeding 40s. as a punishment for such disobedience, or neglect of duty, and, by warrant under their hands and seals, to direct such fine, if not paid, to be levied by distress and sale, and such fine shall be applied for the relief of the poor of the parish, at the discretion of the justices: and if any person shall be aggrieved by the imposition of such fine, or by any order or warrant for levying the same, or by the determination of the said justices, or by any act to be done in the execution of such warrant, he may appeal to the next general or quarter sessions, of which appeal ten days' notice shall be given; and for want of distress, such person shall be committed to the house of correction for not exceeding ten days.

But no person acting under such warrant of distress shall be deemed a trespasser *ab initio*, by reason of any irregularity or informality in the warrant or proceedings, but the person aggrieved may recover special damages in an action.

By 3 Will. and Mar. c. 11. in all actions to be brought for recovery of any money mispent or taken by churchwardens or overseers of the poor to their own use, the evidence of the parishioners, other than such as receive alms, or any pension, or gift out of the collections or public monies of the parish, shall be admitted.

On the construction of these statutes very numerous decisions have been made: for these the reader is referred to Burn's or Williams's elaborate works on the office of Justice of the Peace and the Poor Laws, where the cases are fully stated.

OUSTER LE MAIN, denotes a judgment given for him that traversed or sued a *monstrans le droit*, and is indeed a delivery of lands out of the king's hands; for when it appears, upon the matter discussed, that the king hath no right or title to the thing seized, then judgment shall be given in chancery, that the king's hands be amoved, and thereupon an *amoveas manum* shall be awarded to the escheator, which is as much as if the judgment were given that the party shall have his land again.

OUTLAWRY, is being put out of the law, or out of the king's protection. It is a punishment inflicted for a contempt in refusing to be amenable to the process of the higher courts. By outlawry in civil actions, a person is put out of the protection of the law, so that he is not only incapable of suing for the redress of injuries, but may be imprisoned, and forfeits all his goods and chattels, and the profits of his land: his personal chattels immediately upon the outlawry, and his chattels real, and the profits of his lands, when found by inquisition.

It seems that originally process of outlawry only lay in treason and felony, and was afterwards extended to trespass of an enormous nature; but the process of outlawry at this day lies in all appeals, and in all indictments of conspiracy and deceit, or other crimes of an higher nature than trespass *vi et armis*; but it lies not in an action, nor on an indictment on a statute, unless it be given by such statute either expressly, as in the case of a *præmunire*, or impliedly, as in cases made treason or felony by statute, or where a recovery is given by an action in which such process lay before, as in cases of forcible entry.

1. *Process of outlawry.* The exigent must be sued in the county where the party really resides, for there all actions were originally laid; and because that outlawries were at first only for treason, felony, or very enormous trespasses, the process was to be executed at the torn, which is the sheriff's criminal court; and this held not only before the sheriff, but before the coroners, who were ancient conservators of the peace, being the best men in each county, to preside with the sheriff in his court, and who pronounced the outlawry in the county court on the parties being *quinto exactus*; and therefore anciently there was no occasion for any process to any other county than that in which the party actually resided. But the modern practice being different, the reader is referred to *Tidd's Pract. K. B.*

2. *Of the reversal of outlawries.* There are two ways of reversing an outlawry; first, by a writ of error returnable *coram nobis*; secondly, by motion founded on a plea, averment, or suggestion, of some matter apparent; as in respect of a *supersedeas*, omission of process, variance, or other matter apparent on record.

PAPER. By 52 Geo. 3. c. 143. if any unauthorised person make, or assist in making, or (without lawful excuse, proof thereof to lie on the party accused) have in their possession any frame for making paper, with the words "Excise Office" visible in the sub-



stance of such paper ; or if they shall make, or assist in making, any paper in the substance whereof those words shall be visible, or shall by any contrivance cause them to become visible, or shall engrave or make any mark in imitation of the marks used by the commissioners of excise in Great Britain for stamping permits for the removal of excisable commodities, every such offender shall on conviction be adjudged guilty of felony, and suffer death accordingly.

**PAPISTS**, persons professing the popish religion. By several statutes, if any English priest of the church of Rome, born in the dominions of the crown of England, came to England from beyond the seas, or tarried in England three days without conforming to the church, he was guilty of high treason ; and they also incurred the guilt of high treason who were reconciled to the see of Rome, or procured others to be reconciled to it. By these laws also, papists were disabled from giving their children any education in their own religion. If they educated their children at home, for maintaining the schoolmaster, if he did not repair to church, or was not allowed by the bishop of the diocese, they were liable to forfeit 10l. a month, and the schoolmaster was liable to the forfeiture of 40s. a day: if they sent their children for education abroad, they were liable to forfeit 100l. and the children so sent were incapable of inheriting, purchasing, or enjoying, any lands, profits, goods, debts, legacies, or sums of money : saying mass was punishable by a forfeiture of 200 marks ; and hearing it by a forfeiture of 100.

But during the late reign, the Roman Catholics have been in a great measure relieved from the odious and severe (if not unjust) restrictions formerly imposed upon them, by the statutes 18 *Geo.* 3. c. 60. ; 31 *Geo.* 3. c. 22. ; and 43 *Geo.* 3. c. 30. to which, on account of their length and consequence, the reader is referred.

**PARAPHERNALIA**, are the woman's apparel, jewels, and other things, which, in the life-time of her husband, she wore as the ornaments of her person, to be allowed by the discretion of the court, according to the quality of her and her husband. The husband cannot devise such ornaments and jewels of his wife ; though during his life he hath power to dispose of them. But if she continue in the use of them till his death, she shall afterwards retain them against his executors and administrators, legatees, and all other persons, except creditors, where there is a deficiency of assets.

**PARDON**, is the remitting or forgiving a felony or other offence committed against the king.

Blackstone mentions the power of pardoning offences to be one of the greatest advantages of monarchy in general, above every other form of government, and which cannot subsist in democracies. Its utility and necessity are defended by him on all those principles which do honour to human nature.

Pardons are either general or special ; general as by act of par-

liament; of which, if they are without exceptions, the court must take notice *ex officio*; but if there are exceptions therein, the party must aver that he is none of the persons excepted.

*Special pardons*, are either of course, as to persons convicted of manslaughter, or *se defendendo*, and by several statutes to those who shall discover their accomplices in several felonies; or of grace, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded.

A pardon may be conditional; that is, the king may extend his mercy on what terms he pleases, and may annex to his bounty a condition either precedent or subsequent, on the performance whereof the validity of the pardon will depend; and this by the common law.

All pardons must be under the great seal. The effect of a pardon is to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence, and to give him a new credit and capacity: but nothing but an act of parliament can restore or purify the blood after an attainer.

**PARENTS AND CHILDREN.** If parents run away, and leave their children at the charge of the parish, the churchwardens and overseers, by order of the justices, may seize the rents, goods, and chattels of such parents, and dispose thereof towards their children's maintenance.

A parent may lawfully correct his child, being under age, in a reasonable manner; but the legal power of the father over the persons of his children ceaseth at the age of twenty-one.

**PARISH**, signifies the precinct of a parish church, and the particular charge of a secular priest. These districts are computed to be near 10,000 in number.

**PARISH CLERK.** In every parish, the parson, vicars, &c. hath a parish clerk under him, who 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 christenings, marriages, burials, &c. besides wages for their maintenance.

**PARISHIONER**, an inhabitant of or belonging to any parish lawfully settled therein.

Parishioners are a body politic to many purposes; as to vote at vestry if they pay scot and lot; and they have a sole right to raise taxes for their own relief, without the interposition of any superior court; may make by-laws to mend the highways, and to make banks to keep out the sea, and for repairing the church, and making a bridge, &c. or any such thing for the public good.

**PARLIAMENT.** The parliament is the legislative branch of the supreme power of Great Britain, consisting of the king, the lords spiritual and temporal, and the knights, citizens, burgeses, representatives of the commons of the realm, in parliament assembled.

The power and jurisdiction of parliament is so transcendent and



absolute, that it cannot be confined, either for causes or persons, within any bounds.

*Of the house of commons.* The house of commons is a denomination given to the lower house of parliament. In a free state, every man who is supposed a free agent, ought to be, in some measure, his own governor; and therefore a branch at least of the legislative power should reside in the whole body of the people. In elections for representatives for Great Britain, anciently, all the people had votes; but King Henry VI. to avoid tumults, first appointed that none should vote for knights but such as were freeholders, did reside in the county, and had forty shillings yearly revenue. In so large a state as ours, therefore it is wisely contrived that the people should do that by their representatives which it is impracticable to perform in person; representatives chosen by a number of minute and separate districts, wherein all the voters are or may be easily distinguished. The counties are therefore represented by knights, elected by the proprietors of lands; the cities and boroughs are represented by citizens and burgesses, chosen by the mercantile, or supposed trading interest of the nation.

By the 39 and 40 *Geo. 3. c. 92.* several regulations were made relative to the offices in the house of commons; these have since been repealed by the 52 *Geo. 3. c. 11.* which has established new and further regulations concerning such offices; but as these are not of general interest, the reader is referred to the act in question for further particulars. Since the article ELECTION was printed off, a very important act has been passed relative to members of the house of commons becoming bankrupt, of which the following is the substance:—By the 52 *Geo. 3. c. 144.* reciting that whereas it is highly necessary, for the preservation of the dignity and independence of parliament, that members of the house of commons of the united kingdom who become bankrupts, and do not pay their debts in full, shall not retain their seats: it is therefore enacted, that from the passing of this act, whenever a commission of bankruptcy shall issue against any member of the house of commons, and he shall be declared a bankrupt under the same, such member shall be, and shall remain during twelve calendar months from the time of the issuing thereof, utterly incapable of sitting and voting in the house of commons, unless within the said period such commission shall be superseded, or unless within the same period the creditors of such member, proving their debts under the commission of bankruptcy, shall be paid or satisfied to the full amount of their debts under the said commission: provided always, that such of the debts, if any, as shall be disputed by such bankrupt, if he shall, within the time aforesaid, enter into a bond or bonds in such sum, with two sufficient sureties to be approved by the commissioners under the said commission of bankruptcy, or the major part of them, to pay such sum or sums of money as shall be recovered in any action, or other proceeding in law or equity, concerning such debt or debts, together with such costs as shall be given

in the same, shall be considered, for the purposes of this act, as paid or satisfied.

And if the said commission shall not, within twelve calendar months from the issuing thereof, be superseded, nor the debts satisfied in manner aforesaid, then the commissioners, or the major part of them named in such commission, are required, immediately after the expiration of twelve calendar months from the issuing of the said commission, to certify the same to the speaker of the house of commons of the united kingdom, and thereupon the election of such member shall be void; and the speaker for time being, during any recess of the said house, whether by prorogation or adjournment, is required forthwith, after receiving such certificate, to cause notice thereof to be inserted in the London Gazette; and upon the expiration of fourteen days after the day of inserting such notice in the gazette, to issue his warrant to the clerk of the crown to make out a new writ for electing another member in the room of such member who shall have so vacated his seat: but nothing herein contained shall enable the speaker to issue his warrant for the purposes aforesaid, unless such certificate shall have been delivered to him so long before the then next meeting of the house of commons for the dispatch of business, as that the writ for the election may be issued before the day of such next meeting of the house of commons.

All the provisions of the 24 Geo. 3. c. 26. for repealing so much of two former acts as authorized the speaker of the house of commons to issue his warrant to the clerk of the crown for making out writs for the election of members to serve in parliament in the manner therein mentioned, and for substituting other provisions, for the like purposes, so far as such powers enable the speaker of the house of commons to nominate and appoint other persons, being members of the house of commons, to issue warrants for the making out of new writs during the vacancy of the office of speaker, or during his absence out of the realm, shall be, and they are hereby made to be, in force for the purpose of enabling him to make the like nomination and appointment for issuing warrants under the like circumstances and conditions, for the election of members of parliament in the room of such whose seats shall become vacant under the provisions of this act.

By the 41 Geo. 3. c. 63. no person who shall have been ordained priest or deacon shall be capable of sitting in the house of commons.

By the 52 Geo. 3. c. 99. in order to entitle any person to vote at an election for a member of parliament in respect of land tax; it shall not be necessary to have the same, or any memorial of the contract or certificate of the purchase thereof registered, or as other fee-farm rents and annuities, or a memorial of the grant thereof, are required by law to be registered before any person can vote for electing a member of parliament in respect thereof.

11. *The house of lords* consists of the lords spiritual and temporal, or of the archbishops and bishops, and of the peers of the realm.



The peculiar laws and customs of the house of commons relate principally to the raising of taxes, and the election of members to serve in parliament.

III. *The method of making laws* is nearly the same in both houses. In the house of commons, in order to bring in a bill, if the relief sought be of a private nature, it is first necessary to prefer a petition, which must be presented by a member, and usually set forth a grievance required to be remedied. This petition, when founded on facts of a disputable nature, is referred to a committee of members, who examine the matter alleged, and accordingly report it to the house; and then, (or otherwise upon the mere petition,) leave is given to bring in the bill. In public matters, the bill is brought in upon motion made to the house, without any petition.

If the bill begin in the house of lords, if of a private nature, it is referred to two judges, to make report.

After a second reading, the bill is said to be committed, that is referred to a committee; which is selected by the whole house, in matters of small importance; or upon a bill of consequence, the house resolves itself into a committee of the whole house. A committee of the whole house is composed of every member; and to form it, the speaker quits the chair, and may consequently sit and debate upon the merits of it as a private member, another member being appointed chairman for the time. In these committees the bill is usually debated clause by clause, amendments made, and sometimes it is entirely new modelled. Upon the third reading, further amendments are sometimes made; and if a new clause be added, it is done by tacking a separate piece of parchment on the bill, which is called a ride

The royal assent may be given two ways; 1. in person, when the king comes to the house of peers in his crown and royal robes, and sending for the commons to the bar, the titles of all the bills that have passed both houses are read, and the king's answer is declared by the clerk of the parliament. If the king consent to a public bill, the clerk usually declares, *le roy le veut*, the king wills it so to be; if to a private bill, *soit fait comme il est desiré*, be it as it is desired. If the king refuses his assent, it is in the gentle language of *le roy s'avisera*, the king will advise upon it. When a bill of supply is passed, it is carried up and presented to the king by the speaker of the house of commons, and the royal assent is thus expressed, *le roy remercie ses loyal sujets, accepte leur benevolence, et aussi le veut*; the king thanks his loyal subjects, accepts their benevolence, and also wills it so to be. By the stat. 33 H. 8. c. 21. the king may give his assent by letters patent under his great seal, signed with his hand, and notified in his absence to both houses assembled together in the upper house. And when the bill has received the royal assent in either of these ways, it is then, and not before, a statute or act of parliament.

An act of parliament thus made, is the exercise of the highest authority that this kingdom acknowledges upon the earth. It hath

power to bind every subject in the land, and the dominions thereunto belonging; nay even the king himself, if particularly named therein. And it cannot be altered, amended, dispensed with, suspended, or repealed, but in the same forms, and by the same authority of parliament.

IV. *Adjournment*, is no more than a continuance of the session from one day to another, as the word itself signifies; and this is done by the authority of each house separately every day, or for a longer period; but the adjournment of one house is no adjournment of the other.

V. *Prorogation*, is the continuance of the parliament from one session to another, as an adjournment is a continuation of the session from day to day. And this is done by the royal authority, expressed either by the lord chancellor, in his majesty's presence, or by commission from the crown, or frequently by proclamation; and by this both houses are prorogued at the same time; it not being a prorogation of the house of lords or commons, but of the parliament. The session is never understood to be at an end until a prorogation; though unless some act be passed, or some judgment given in parliament, it is, in truth, no session at all.

VI. *A dissolution*, is the civil death of the parliament; and this may be effected three days: 1. by the king's will, expressed either in person or representation; 2. by the demise of the crown; 3. by length of time.

1. *By the king's will*; for as the king has the sole right of convening the parliament, so also it is a branch of the royal prerogative, that he may, whenever he please, prorogue the parliament for a time, or put a final period to its existence.

2. *By the demise of the crown*; this dissolution formerly happened immediately upon the death of the reigning sovereign; but the calling a new parliament immediately on the inauguration of the successor being found inconvenient, and dangers being apprehended from having no parliament in being, in case of a disputed succession, it was enacted by statutes 7 and 8. *W. 3. c. 15* and 6 *Anne, c. 7.* that the parliament in being shall continue for six months after the death of any king or queen, unless sooner prorogued or dissolved by the successor. That if the parliament be, at the time of the king's death, separated by adjournment or prorogation, it shall, notwithstanding, assemble immediately: and that if no parliament is then in being, the members of the last parliament shall assemble, and be again a parliament.

VII. *Lastly*, a parliament may be dissolved or expire by length of time.

The utmost extent of time that the same parliament was allowed to sit by the stat. of 6 *W. c. 3.* was three years; after the expiration of which, reckoning from the return of the first summons, the parliament was to have no longer continuance. But by stat. 1. *Geo. 1. c. 38.* in order, professedly, to prevent the great and continued expences of frequent elections, and the violent heats and animosi-



ties consequent thereupon, and for the peace and security of the government, just then recovering from the late rebellion, this term was prolonged to seven years. So that as our constitution now stands, the parliament must expire, or die a natural death, at the end of every seventh year, if not sooner dissolved by the royal prerogative.

VIII. PARLIAMENT, (the high court of,) is the supreme court of the kingdom, not only for the making, but also for the execution of laws, by the trial of great and enormous offenders, whether lords or commoners, in the method of parliamentary impeachment. An impeachment, before the lords, by the commons of Great Britain in parliament is a prosecution of the already known and established law, and has been frequently put in practice; being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom. A commoner cannot, however, be impeached before the lords for any capital offence, but only for high misdemeanors: a peer may be impeached for any crime. And they usually, in case of an impeachment of a peer for treason, address the crown to appoint a lord high steward, for the greater dignity and regularity of their proceedings; which high steward was formerly elected by the peers themselves, though he was generally commissioned by the king; but it hath of late years been strenuously maintained that the appointment of a high steward in such cases is not indispensably necessary, but the house may proceed without one. The articles of impeachment are a kind of bills of indictment, found by the house of commons, and afterwards tried by the house of lords, who are, in cases of misdemeanors, considered not only as their own peers, but as the peers of the whole nation.

PAROLE, a term signifying any thing done verbally or by word of mouth, in contradistinction to what is written; thus an agreement may be by parole. Evidence also may be divided into parole evidence and written evidence. A parole release is good to discharge a debt by simple contract. The holder of a bill of exchange may authorize another to indorse his name upon it.

PAROLE ARREST. Any justice of the peace may, by word of mouth, authorize any one to arrest another who is guilty of a breach of the peace in his presence.

PAROLE DEMURRER, a privilege allowed an infant who is sued concerning lands which came to him by descent; and the court thereupon will give judgment *quod loquela prædicta remaneat quousque*, the infant come to the age of twenty-one years.

PARSON, signifies the rector of a church. He is in himself a body corporate, in order to protect and defend the rights of the church by a perpetual succession. When a parson is instituted and inducted into a rectory, he is then, and not before, in full and complete possession.

PARSONAGE, or rectory, is a spiritual living, composed of land, tithe, and other oblations of the people, separated or dedi-

cated to God, in any congregation for the service of his church there, and for the maintenance of the minister, to whose charge the same is committed.

**PARTITION**, is a dividing of lands descended by the common law or custom among coheirs or parceners, where there are two at the least.

**PARTNERS**. See **COPARTNERS**.

**PART OWNERS**, are partners interested and possessed of certain shares in a ship. Owners are tenants in common with each other; but one or more joint owners refusing to contribute their quota to the outfit of the vessel cannot prevent her from going to sea against the consent of the majority of the owners, who, giving security to the admiralty, may freight the ship at their own exclusive risk, by which the smaller dissentient number of owners will be excluded at once from any share either in the risk or in the profits.

**PASSPORT**, is a licence for the safe passage of any person from one port to another.

**PAWNBROKERS**, are persons who lend money on pawns or pledges. By the 44 *Geo. 3. c. 98*, pawnbrokers residing in London, Westminster, Southwark, or within the bills of mortality, must take out an annual licence from the the stamp office, the duty on which is 10*l.* and in any other part of Great Britain, 5*l.* Penalty of acting as pawnbroker without such license is 50*l.* by 25 *Geo. 3. c. 48*. And no one pawnbroker shall keep more than one shop under one license. Persons in partnership need take only one license.

By 32 *Geo. 2. c. 24*. if pawnbrokers deal in gold or silver plate, they must take out an excise license, and pay duty accordingly.

As pawnbrokers have of late years, greatly increased both in number and in business, they have become objects of attention to the legislature, which has passed various statutes for the better regulation of their business, and the prevention of fraud or oppression towards those whose necessities compel them to borrow money of pawnbrokers. The following is an outline of the statutes now in force concerning pawnbrokers.

By 24 *Geo. 2. c. 40*. no retailers of spirituous liquors shall take any pawn, on pain of forfeiting 40*s.*

By 30 *Geo. 2. c. 24*. persons pawning, exchanging, or disposing of goods without leave of the owner, shall forfeit 20*s.* and on non-payment be committed for fourteen days to hard labour; and if not paid within that time, to be whipped, on application of the prosecutor. Pawnbrokers are to make entry of goods pawned, and give a duplicate, if required, on penalty of 5*l.* and must also allow satisfaction for damage done to the goods by their default or neglect.

By 39 and 40 *Geo. 3. c. 99*. pawnbrokers are allowed to take the following rates for profit, viz.—

For every pledge not exceeding 2*s.* 6*d.* one halfpenny, for any



time it shall remain in pawn, not exceeding, one month, and the same for every other month, including the current month in which such pledge shall be redeemed, although such month shall not be expired. For every pledge upon which there shall have been lent 5s. one penny; 7s. 6d. one penny halfpenny; 10s. two pence; 12s. 6d. two pence halfpenny; 15s. three pence; 17s. 6d. three pence halfpenny; and 1l. four pence, and so on, and in proportion for not exceeding 40s.; exceeding 40s. and not 42s. eight pence; exceeding 42s. and not 10l. ten pence, and no more, for every 20s. The pawnbroker may take for any pledge above 2s. 6d. and not more than 40s. after the rate of 4d. for the lone of 20s. per month. But parties may redeem within seven days after the end of the first month, without paying any thing extra for the seven days, or within fourteen days, upon paying for one month and a half; but parties applying to redeem after the fourteen days must pay for the second month; and the like regulations are observable in every subsequent month when application shall be made to redeem. And pawnbrokers shall give farthings in exchange.

Pawns shall be entered in books, with a description of the goods, the money lent, the date, and the name and place of abode of the person pawning; and the pawnbrokers shall give to the person pawning, a note describing the goods, the money lent, the date, the name and place of abode of the person pawning, with the name and place of abode of the pawnbroker; which note shall be given gratis if the sum lent is under 5s.; but where the money lent is 5s. and under 10s. the pawnbroker may take a halfpenny for the same: for 10s. and under 20s. one penny; 20s. and under 5l. two pence; 5l. or more, four pence; upon the production of which notes the pawnbrokers shall deliver up the goods pawned. The interest taken thereon shall be indorsed on the duplicates of pledges redeemed and kept by the pawnbrokers for one year.

Persons unlawfully pawning goods, not being authorized by the owners, shall forfeit not exceeding 5l. nor less than 20s. and the full value of the goods; and on default of payment, may be committed to hard labour for not more than three months, and if the penalties are not paid within three days before the expiration of the imprisonment, the party may upon the application of the prosecutor, be whipped; and the penalties go to the parties injured: but if he will not accept the same, to the poor. And if any persons forge or counterfeit notes, or do not give an account of themselves on offering to pawn or redeem goods, they may be seized and carried before a justice, who, on conviction, may send the offender to the house of correction for not more than three months.

All persons not giving a good account of themselves on offering to pawn goods, may be detained, and taken before a magistrate to be examined, and committed to be dealt with according to law, when necessary, or otherwise, for not exceeding three months.

If any person buy or take in pledge unfinished goods, or linen or apparel intrusted to others to wash or mend, they shall forfeit double the sum lent, and restore the goods; and peace-officers,

under a warrant, may search for such things, which, if found, are to be restored to the owner.

When goods are unlawfully pawned, the pawnbroker shall restore them; the party may have a search warrant, and if found, the justice may direct them to be restored. But if a pawnbroker will not deliver up goods to the pawner upon production of a note, and tender of the principal and interest within a year, or one year and three months, as the case is, the justice may, upon proof thereof, convict such pawnbroker, and send him to prison without bail, there to remain till he deliver up the goods, or make such compensation as the justice thinks fit.

Persons producing notes or memorandums shall be deemed the owners; and where notes or memorandums are lost, the pawnbroker shall deliver a copy, with the form of an affidavit, according to the case, taking for such copy and form of an affidavit, where the goods pawned do not exceed 5s. one-halfpenny; exceeding 5s. and not 10s. one penny; and if above 10s. according to the rates payable for the original notes: which affidavit, being made before a justice, shall authenticate the same, and the pawnbroker shall thereupon permit the pawner to redeem.

Pawned goods shall be deemed forfeited at the end of one year, and shall be sold by public auction, where the goods are pawned for more than 10s. and not above 10l. and the auctioneer shall expose the same to view, publish catalogues, and advertise the time and place of sale, with the name of the pawnbroker, in some newspaper, two days before the sale; but on notice in writing, or the presence of a witness, from persons having goods in pledge, not to sell, three months further shall be allowed beyond the year for redemption:

Pictures, however, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, shall only be sold four times in the year; viz. on the first Monday and following days in January, April, July, and October, in each year, and to be regularly advertised, on pain of not exceeding 5l. nor less than 40s.

An account of sales of pledges above 10s. shall be entered by the pawnbrokers in a book, and the overplus paid to the owner of the goods pawned or sold, on pain of 10l. and treble the sum lent.

No pawnbrokers shall purchase, or agree to purchase, any goods whilst they are in their custody, in pledge, except at auction; nor shall they take pawns from persons appearing to be under twelve years of age, or intoxicated with liquor; nor shall they purchase, or take in pawn, the notes of other pawnbrokers; nor shall they buy any goods before eight in the forenoon, nor after seven in the evening; nor receive pawns before eight in the forenoon, or after eight in the evening, between Michaelmas and Lady-day, or before seven in the morning, or after nine in the evening, during the remainder of the year; Saturday evenings, and the evenings preceding Good Friday and Christmas-day excepted.

Pawnbrokers shall place in view the table of rates allowed by,



this act, and the price of notes. Their names and business also must be placed over the door, on penalty of 10*l.* for every shop so used, one half to the informer, and half to the poor; to be levied by distress and sale; and in default thereof, the party may be imprisoned for not more than three months, nor less than fourteen days.

Pawnbrokers having sold goods illegally, or having embezzled or injured goods, shall make such satisfaction as the justice shall award to the owners, in case the same shall not amount to the principal and profit; or if it does, the goods shall be delivered to the owner without paying any thing, under the penalty of 10*l.*

Pawnbrokers are required to produce their books when necessary, on penalty of paying not exceeding 10*l.* nor less than 5*l.*: and pawnbrokers offending against this act, in neglecting to keep books, or make entries, shall forfeit not exceeding 10*l.* and for every other offence, where no forfeiture is provided, nor less than 40*s.* nor more than 5*l.*

All forfeitures are to be recovered before any justice, so that prosecutions be commenced within twelve months.

The churchwardens and overseers nominated by a justice are obliged to prosecute, and any inhabitant may be a witness, except persons convicted of fraud or felony.

This act does not extend to persons lending money at 5*l.* per cent. without further profit. But it extends to the executors and administrators of pawnbrokers and pawners; and an appeal from the justice's conviction lies to the sessions.

**PAYMENT**, is the consideration or purchase-money for goods, and may be made by the buyer giving to the seller the price agreed upon, either by bill or note, or by money. Where a day certain is appointed for payment, the party bound shall be allowed till the last moment of the day to pay it in, if it be an inland bill.

Payment of money before the day, is in law, 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.

**PEACE**, in the law, signifies a quiet and harmless behaviour towards the king and his people.

The king by his office and dignity royal, is the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the king's peace. All the great officers of state are generally conservators of the peace throughout the kingdom, and may commit all breakers of it, or bind them in recognizance to keep it. Also the sheriff, coroner, constables, and tithing men, are conservators of the peace within their own jurisdiction, and may apprehend all breakers of the peace, and commit them till they find sureties to keep the peace.

**PEERS**, in our common law, are those who are impannelled in an inquest upon any man, for the convicting or clearing him of any

offence for which he is called in question; and the reason thereof is, because the course and custom of our nation is to try every man in such a case by his equals, or peers.

**PEERS OF THE REALM**, are the nobility of the kingdom, and lords of parliament; who are divided into dukes, marquisses, earls, viscounts, and barons; and the reason why they are called peers, is, because notwithstanding there is a distinction of dignities in our nobility, yet in all public actions they are equal; as in their votes of parliament, and in passing upon the trial of any nobleman.

It seems clearly, that the right of peerage was originally territorial; that is, annexed to lands, houses, castles, and the like; the proprietors and possessors of which were, in right of those estates, allowed to be peers of the realm, and were summoned in parliament to do suit and service to their sovereign; and, when the land was alienated, the dignity passed with its appendant. Thus the bishops sit still in the house of lords in right of succession to certain ancient baronies annexed, or supposed to be annexed, to their episcopal lands.

But afterwards, as alienations grew frequent, the dignity of peerage was confined to the lineage of the party ennobled, and instead of territorial, became personal. Actual proof of a tenure by barony became no longer necessary to constitute a lord of parliament; but the record of the writ of summons to him, or his ancestors, was admitted as a sufficient evidence of the tenure.

Peers are now created either by writ, or patent; for those who claim by prescription must suppose either a writ or patent made to their ancestors, though by length of time it may be lost. The creation by writ, or the king's letter, is a summons to attend the house of peers, by the stile and title of that barony which the king is pleased to confer; that by patent, is a royal grant to a subject of any dignity and degree of peerage. The creation by writ is the more ancient way; but a man is not ennobled thereby, unless he actually take his seat in the house of lords; and therefore the most usual, because the surest way, is to grant the dignity by patent, which ensures to a man and his heirs, according to the limitations thereof, though he never himself makes use of it.

In criminal cases, a nobleman is tried by his peers. Peers shall have the benefit of clergy for the first offence of felony, without being burned in the hand.

**PERJURY**, is a crime committed when a lawful oath is administered, by any one who hath authority, to a person in any judicial proceeding, who swears wilfully, absolutely, and falsely, in a matter material to the issue or cause in question, by his own act, or by the subornation of others. To constitute perjury, it is essential that the oath be wilfully taken; that it be in a judicial proceeding, or some other public proceeding of a similar nature: the oath must be taken before persons lawfully authorized to administer it, and also by a person sworn to depose the truth; it must also be



taken absolutely and directly, and upon something material to the point in issue.

It is not material whether the false oath were credited or not, or whether the party in whose prejudice it was taken was in the event damaged by it; for the prosecution is not grounded upon the damage, but on the abuse of public justice; neither is it material whether the thing sworn be true or false.

By stat. 5 *Eliz. c. 9.* persons guilty of perjury, or subornation of perjury, are to be punished with one year's imprisonment, and stand in the pillory where the offence was committed. This offence is also punished by transportation.

**PETITION.** No petition to the king, or to either house of parliament, for any alteration in church or state, shall be signed by above twenty persons, unless the matter thereof be approved by three justices of the peace, or the major part of the grand jury in the country; and in London by the lord mayor, aldermen, and common council; nor shall any petition be presented by more than ten persons at a time.

**PETITION IN CHANCERY,** a request in writing, directed to the lord chancellor, or master of the rolls, showing some matter or cause whereupon the petitioner prays somewhat to be granted him.

**PHYSICIANS.** No person within London, nor within seven miles of the same, shall exercise as a physician or surgeon, except he be examined and approved by the Bishop of London, or the Dean of St. Paul's, calling to them four doctors of physic, and for surgery, other expert persons in that faculty, of them that have been approved, upon the pain of forfeiture, for every month, 5*l.* one half to the king, and the other half to any that will see.

One that has taken his degree of doctor of physic in either of the universities, may not practise in London, and within seven miles of the same, without license from the college of physicians.

And it hath been holden, that if a person, not duly authorized to be a physician or surgeon, undertake a cure, and the patient die under his hands, he is guilty of felony; but he is not excluded from the benefit of clergy. No physician can maintain an action for his fees. Physicians are exempt from serving civil offices, and also in the militias.

**PIGEONS.** Every person who shall shoot at, kill, or destroy a pigeon, may be committed to the common gaol for three months, by two justices of the peace, or pay 20*s.* to the poor.

**PIRATE,** one who maintains himself by pillage and robbing at sea.

By stat. 27 *Hen. 8. c. 4.* and 28 *Hen. 8. c. 15.* all treasons, felonies, robberies, murders, and confederacies, committed upon the sea, or in any haven, creek, or place, where the admiral hath jurisdiction, shall be tried in such shires, or places, as the king shall appoint by his commission, in like forms as if such offence had been committed upon land, and according to the course of the

common law, and the offenders shall suffer death without benefit of clergy.

By the stat. 11 and 12 *W. 3. c. 7.* (made perpetual by the 6 *Geo. 1. c. 19.*) if any natural born subject commit any act of hostility upon the high seas, against others of his majesty's subjects, under colour of a commission from any foreign power, this, though it would be only an act of war in an alien, shall be construed piracy in a subject. And farther, any commander, or other sea-faring person, betraying his trust, and running away with any ship, boat, ordnance, ammunition, or goods, or yielding them up voluntarily to a pirate, or conspiring to do these acts, or any person assaulting the commander of a vessel, to hinder him from fighting in defence of his ship, or confining him, or making, or endeavouring to make, a revolt on board, shall, for each of these offences, be adjudged a pirate, felon, and robber, and shall suffer death, whether he be principal, or merely accessory, by setting forth such pirates, or abetting them before the fact, or receiving and concealing them or their goods after it. By the 4 *Geo. 1. c. 11.* pirates under this last act are to be tried according to the 28 *Hen. 8. c. 15.* and are expressly excluded from the benefit of clergy. By the 8 *Geo. 1. c. 24.* (made perpetual by 2 *Geo. 2. c. 28.*) the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in any wise consulting, combining, confederating, or corresponding with them, or the forcibly boarding any merchant vessel, though without seizing or carrying her off, and on throwing any of the goods overboard, shall be deemed piracy; and such accessories to piracy as are described by the 11 and 12 *Will. 3. c. 7.* are declared to be principals; and all pirates convicted by virtue of this act are made felons without benefit of clergy. By the same statutes also, (to encourage the defence of merchant vessels against pirates,) the commanders or seamen wounded, and the widows of such seamen as are slain in any piratical engagement, are entitled to a bounty, to be divided among them, not exceeding one fiftieth part of the value of the cargo on board: and such wounded seamen shall be entitled to the pension of Greenwich Hospital, which no other seamen are, except only such as have served in a ship of war. And if the commander shall behave cowardly, in not defending the ship, if she carries guns or arms, or shall discharge the mariners from fighting, so that the ship fall into the hands of pirates, such commander shall forfeit all his wages, and suffer six months' imprisonment.

By the 18 *Geo. 2. c. 30.* persons, during any war, committing hostilities at sea, where the admirals have power, against his majesty's subjects, or giving aid to enemies at sea, may be tried as pirates. Piracies at sea are excepted out of the general pardon, by 20 *Geo. 2. c. 52.*

By the 39 *Geo. 3. c. 37.* all offences whatever committed on the high seas shall be liable to the same punishment as if committed on shore, and shall be tried and adjudged in the same manner as felonies are directed by 28 *Hen. 8. c. 15. s. 1.* Persons tried for murder



or manslaughter, and found guilty of manslaughter only, shall be entitled to the benefit of clergy, and be subject to the same punishment as if committed on land.

By the 46 *Geo. 3. c. 54.* all offences whatever committed on the sea, or in any haven, river, creek, or place, within the admiralty jurisdiction, may be tried in any of his majesty's islands or dominions, by virtue of the king's commission under the great seal, and the commissioners shall have the same powers as under 28 *Hen. 8. c. 15.*

By the 48 *Geo. 3. c. 130.* commissions for trial of offences within the Cinque Ports, issued under 28 *Hen. 8.* are to be directed to the admirals, or their deputies, and also to the lord warden, and to his deputies.

**PISCARY**, is a right of fishing in another man's waters.

**PLEA**, that which either party alledges for himself in court. These are divided into pleas of the crown and common pleas. Pleas of the crown, are all suits in the king's name, against offences committed against his crown and dignity, or against his crown and peace. Common pleas, are those that are held between common persons.

*Common pleas*, are either dilatory, or pleas to the action.

*Pleas dilatory*, are such as tend merely to delay, or put off the suit, by questioning the propriety of the remedy, rather than by denying the injury.

*Pleas to the action*, are such as dispute the very cause of suit.

**PLEADINGS**. Pleadings in general, signify the allegations of parties to suits when they are put into a proper and legal form; and are distinguished, in respect to the parties who plead them, by the names of bars, replications, rejoinders, sur-rejoinders, rebutters, sur-rebutters, &c. and though the matter in the declaration or court does not properly come under the name of pleading, yet, being often comprehended in the extended sense of the word, it is generally considered under this head.

**PLURALITY**. By 21 *Hen. 8. c. 13.* if any person having one benefice with cure of souls of 8*l.* a year in the king's books, shall accept another, of whatsoever value, and be instituted and inducted into the same, the former benefice shall be void, unless he have a dispensation from the Archbishop of Canterbury, who hath power to grant dispensations to chaplains of noblemen, and others, under proper qualifications, to hold two livings, provided they be not more than thirty miles distant from each other, and provided that he reside in each for a reasonable time every year, and that he keep a sufficient curate in that wherein he doth not ordinarily reside.

**POLICE**, is applied to the internal regulations of large cities and towns, particularly of the metropolis. The police of the city of London is principally regulated by the 2 *Geo. 3. c. 28. 39* and 40 *Geo. 3. c. 87.* (continued by the 47 *Geo. 3. sess. 1. c. 37.*) 43 *Geo. 3. c. 115.* 51 *Geo. 3. c. 65* and 119, to which, on account of their length, the reader is referred.

POOR. Before the reign of our illustrious queen, Elizabeth, no regular provision was made for the support of the poor under the authority of the legislature: since her reign various acts have been passed, the substance only of which is contained in the present article, as the legal decisions on such statutes are too voluminous to admit even of the most cursory notice.

I. *Settlement of the poor.* By 13 and 14 *Car. 2. c. 12.* it is enacted, that within forty days after any poor persons shall come to settle in any tenement under ten pounds a year, two justices may remove them to the place where they were last legally settled.

But by the 1 *Jac. 2. c. 17.* such forty days continuance shall not make a settlement, but from the time of delivering notice in writing; and by 3 *W. c. 11.* it must be from the time of the publication of such notice in the church: but it has always been understood, that a person who is not removeable need not give such notice; and that a person continuing forty days unremoveable, and a person not removed for forty days after such notice given and published, shall equally gain a settlement.

Where the last legal settlement of the father of a legitimate child is not known, the child may be sent to the place of its birth, as well as an illegitimate one.

A legitimate child shall necessarily follow the settlement of its parents as a nurse child, or as a part of the family, only till it be seven years of age; and after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own legal settlement, as being deemed capable at that age of having gained a settlement of his own.

By the 13 and 14 *Car. 2. c. 12.* on complaint by the churchwardens or overseers of the poor, within forty days after any person shall come to settle in any parish, or any tenement under 10*l.* a year, two justices, (one of the quorum,) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least.

If a person be bound apprentice by indenture, wherever he continues forty days in the service of his master or mistress, there such apprentice gains a settlement; and where any person serves the last forty days of his apprenticeship, that is the place of his last legal settlement.

The 8 and 9 *W. c. 30.* explains, that as some doubts had arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, it was enacted, that no such person so hired as aforesaid should be deemed to have a good settlement in any such parish or township, unless such person should continue and abide in such service during the space of one whole year.

A general hiring, without any particular time agreed upon, is construed to be an hiring for a year, and therefore sufficient.

It is not the terms of the hiring, but the intention, that is the criterion; for though a servant be hired for so much per week, yet if



it be understood at the time that he is to continue for the year, if approved of, it is equal to an hiring for a year.

A woman marrying an husband who has a known settlement, shall follow her husband's settlement.

The act of 9 and 10 *W. c. 11.* doth not require a person renting a tenement of 10*l.* a year to occupy it: it is enough if he rent it and reside forty days in the parish.

II. *Poor-rate.* The 43 *Eliz. c. 2.* enacts, that the churchwardens and overseers of the poor of every parish, or the greater part of them, shall raise weekly, or otherwise, (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, mines, or saleable underwoods in the said parish,) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work; and also competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them, being poor, as are not able to work, and also for the putting out poor children apprentices.

The concurrence of the inhabitants in making a rate is not necessary: for the churchwardens and overseers, with the consent of two justices, may make one without them.

The occupier of an house, or of an estate, ought to be rated according to its full value, with all its improvements, and not according to the price which he may have paid for it, without taking into the account the value of the improvements.

By 17 *Geo. 2. c. 3.* the churchwardens and overseers, and other persons authorized to take care of the poor in every parish or place, shall give public notice in the church of every rate for the relief of the poor, allowed by the justices, the next Sunday after the same is allowed, and no rate shall be valid, so as to collect the same, unless such notice shall have been given.

By 17 *Geo. 2. c. 38.* copies of all rates made for the relief of the poor shall be entered in a book to be provided by the churchwardens and overseers, who shall take care that such copies shall be entered within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all such books shall be preserved by the churchwardens and overseers, or one of them, whereto all persons assessed, or liable to be assessed, may resort, and shall be delivered over, from time to time, to the succeeding churchwardens and overseers, as soon as they enter into their offices, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard.

And if any churchwarden, overseer of the poor, or other officer, shall neglect so to do, or act contrary hereto, he shall, on oath thereof made, within two calendar months after the offence, before two justices, forfeit for the use of the poor not exceeding 5*l.* nor less than 20*s.* to be levied by distress and sale of the offender's goods, by warrant from such justices, which sum shall be paid to some churchwarden or overseer of such parish or place:

By 17 *Geo. 2. c. 3.* the churchwardens and overseers shall permit every inhabitant to inspect such rate at all reasonable times, paying

1s. and shall, upon demand, forthwith give copies, paying 6d. for every twenty-four names.

And if any churchwarden or overseer shall not permit any inhabitant to inspect the rates, or shall refuse or neglect to give copies thereof, he shall forfeit 20*l.* to the party aggrieved, to be recovered by action in any court of record.

The poor's rate is to be made for the purposes of raising a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff to set the poor on work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work; and also for the putting out of poor children apprentices; and to do and execute all other things as well for the disposing of the stock, or otherwise concerning the premises, as to them shall seem convenient.

And in case any person shall neglect to pay to the overseers any sum that he shall be legally rated to, the succeeding overseers shall levy such arrears, and reimburse their predecessors all sums expended for the use of the poor, and allowed to be due to them in their accounts.

Where any person shall come into or occupy any house, land, or hereditament, out of which any person assessed shall be removed, or which at the making such rate was empty, every person so removing from, and every person so coming into the same, shall be liable to pay to such rate in proportion to the time that such person occupied the same, as if such person so removing had not removed, or such person so coming in had been originally rated, which proportion, in case of dispute, shall be ascertained by any two justices.

By 43 *Eliz. c. 2.* if the justices do perceive that the inhabitants of any parish are not able to levy among themselves a sufficient sum for the purposes aforesaid, then the said two justices (one to be of the quorum) shall tax, rate, and assess, as aforesaid, any other or other parishes, or out of any parish within the hundred where the said parish is, to pay such sums to the churchwardens and overseers of the said poor of the parish, for the said purposes as the said justices shall think fit. And if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes unable to provide for themselves, then the justices, at their general quarter sessions, shall rate and assess as aforesaid any other or other parishes, or out of any parish within the said county for the purposes aforesaid.

Whatsoever affords a certain annual profit is rateable to the poor. Thus, lands, ground-rents, tithes, waste lands after they have been improved, tolls, conventicles or dissenters' chapels, if let out so as to produce an annual profit, episcopal palaces, corporations, woods, the profits of the ranger of a royal park, and of a prison, together with those of weighing machines on turnpike-roads, are all rateable to the poor. But the palaces and lands of the royal family, buildings *bona fide* used for the public benefit, hospitals and all charitable



institutions, mines, and the profits of professions, are all exempt from the poor rate. But whether stock in trade is rateable is not yet fully determined, though there are strong decisions for and against rating it.

By 43 *Eliz. c. 2.* the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell, or at their general quarter sessions shall be assessed, upon pain to forfeit twenty shillings for every month which they shall fail therein. And such forfeiture shall go to the use of the poor of the same parish, and be levied by the churchwardens and overseers, by warrant from two justices, (one to be of the quorum,) or mayor, or alderman, or head officer, within their limits, by distress and sale; or in defect thereof, such justices, or the said aldermen and head officers within their limits, may commit the offender to the common gaol till the forfeiture be paid.

By the 5 *Geo. 1. c. 8.* reciting, that whereas divers persons run away from their places of abode, some men leaving their wives or children, and some mothers leaving children upon the charge of the parish, although such persons have some estates, which should ease the parish, it is enacted, that it shall be lawful for the churchwardens or overseers, where any wife or children shall be so left, by warrant or order from any two justices, to seize so much of the goods, and receive so much of the annual rents and profits of the lands of such husband, father, or mother, as such justices shall direct, for the discharge of the parish for the providing for such wife, child, or children; which order being confirmed at the next quarter sessions, it shall be lawful for the justices there to make an order for the churchwardens or overseers to dispose of such goods and chattels by sale, or otherwise so much of them, for the purposes aforesaid, as the court shall think fit; and to receive the rents and profits, or so much of them as shall be ordered by the sessions, of his or her lands and tenements, for the purpose aforesaid. And the churchwardens and overseers shall be accountable at the quarter sessions for all money they receive by virtue of this act.

By the 17 *Geo. 2. c. 5.* all persons who threaten to run away and leave their wives and children to the parish shall be deemed idle and disorderly persons; and any justice may commit such offenders (being thereof convicted by confession, or oath of one witness) to the house of correction, there to be kept to hard labour for not exceeding one month. And all persons who run away or leave their wives or children, whereby they may become chargeable to the parish, shall be deemed rogues and vagabonds, and punished as such.

By the 32 *Geo. 3. c. 45.* after reciting that persons by their wilful default and neglect permit their wives to become chargeable to

their parish, it is enacted, that if it be made appear to two justices that such person doth not use proper means to get employment, or if he is able to work, by his neglect of work, or by spending his money in alehouses or places of bad repute, or in any other improper manner, shall not apply a proper proportion of the money he earns towards the maintenance of his wife and family, by which they, or any of them, become chargeable to their parish, he shall be deemed an idle and disorderly person.

By the 17 *Geo. 2. c. 33.* if any person shall be aggrieved by any assessment, or shall have any material objection to any persons being put in or left out of such assessment, or to the sum charged on any person or persons therein, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next general or quarter sessions for the county, riding, division, corporation, or franchise, and the justices there are to receive such appeal, and determine the same; but if reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then hear and determine the same; and the said justices may award to the party from whom such appeal shall be determined, costs, in the same manner as in case of appeals concerning settlements. But in all corporations or franchises that have not four justices of the peace, it shall be lawful to appeal to the next general or quarter sessions of the peace for the county, riding, or division, where such corporation or franchise is situate. And upon all appeals from rates, the justices (where they see just cause to give relief) shall amend the same in such manner only as shall be necessary for giving relief, without altering such rates with respect to other persons mentioned in the same; but if, upon an appeal from the whole rate, it shall be found necessary to quash the same, then they shall order the churchwardens and overseers to make a new equal rate.

By 41 *Geo. 3. sess. 2. c. 23.* all notices of appeal from or against any rate made for the relief of the poor, or from or against the account of the churchwardens and overseers, shall be in writing, and shall be signed by the person giving the same, or his attorney on his behalf; and such notices shall be delivered to or left at the place of abode of the churchwardens and overseers, or any two of them, and the particular causes of appeal shall be stated in such notice; and, upon the hearing, the sessions shall not inquire into any other cause of appeal than such as is stated in the notice of appeal.

But with the consent of the overseers, signified by them or their attorney in open court, and with the consent of any other person interested therein, the said court of session may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing; and also, with the like consent, to hear and decide upon grounds of appeal not stated or mistated in such written notice, where any notice shall have been given in writing.

By 41 *Geo. 3. s. 2. c. 23.* upon all appeals from any rate made for the relief of the poor, the court of general or quarter sessions of



the peace shall (in all cases where they shall see just cause to give relief) amend such rate, either by inserting therein or striking out the name of any person, or by altering the sum therein charged on any person, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate. But if the said court should be of opinion that it is necessary for the purpose of giving relief to the person appealing that the rate should be wholly quashed, then the said court may quash the same. Nevertheless all sums of money in and by such rate charged on any person may be levied, and recovered by such ways, and in the same manner, as if no appeal had been made against such rate; and all sums of money which any person charged in such rate shall pay, or which shall be levied upon or recovered from him, shall be deemed payments on account of the next effective rate which shall be made.

And all sums of money at which any persons are rated may be levied and recovered, notwithstanding the persons so rated, or any other persons, shall have given notice of appeal against such rate for any cause whatsoever: but if any person rated shall give notice of appeal, then, until the appeal shall have been heard, no proceedings shall be carried on to recover any greater sum than the sum at which he shall have been rated at the last effective rate which shall have been collected. And in case the sessions shall, upon appeal, order any rate to be quashed, it shall be lawful for the said court to order any sum in such rate charged on any person, or any part of such sum, not to be paid, and in such case no proceedings shall be commenced; or if commenced, shall be no further carried on for the purpose of levying the payment of any sum so ordered not to be paid: and no justice of the peace, constable, or other officer, or other person, shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing, done for the purpose of levying payment, before he shall have no notice in writing of the order for the non-payment.

If any person shall appeal against any rate, because any other person is rated or is omitted therein, or because any other person is rated at any greater or less sum than the sum at which he ought to be rated therein, or for any other cause that may require any alteration to be made in such rate with respect to any other person; the person so appealing shall give such notice of appeal in writing, as before mentioned, not only to the churchwardens or overseers, or two of them, but also to the other person so interested or concerned in the event of such appeal; and such other person shall, if he shall so desire, be heard upon the said appeal; and it shall be lawful for the sessions, on hearing of such appeal, to order the name of such other person to be inserted in such rate, and him to be therein rated at any sum of money, or to order the name of such other person to be struck out of such rate, or the sum at which he is rated to be altered, in such manner as the court shall think right; and the proper officer of the court shall forthwith add to or alter the rate accordingly. If upon the hearing of any appeal the court

shall order the name of any person to be inserted, and him to be rated, or shall order the sum at which any person is rated to be increased, in such case the sum so ordered to be rated, or to be increased, or so much thereof as shall not have been already paid, may be recovered in the same manner as if he had been originally named in such rate.

If upon the hearing of any appeal the sessions shall order the name of any person to be struck out, or the sum rated to be decreased; and if it shall be made appear that such person hath previously paid any sum in consequence of such rate which he ought not to have paid, then the court shall order such sum to be repaid by the churchwardens and overseers, together with all reasonable costs, occasioned by such persons having paid, or been required to pay, the same; and the sum so ordered to be repaid may, together with all such costs, be levied and recovered from them by distress, and all such other ways as money charged on any person by the rate made for the relief of the poor can be by law levied or recovered.

By the 43 *Eliz. c. 42.* it shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from two or more justices, (one of them to be of the quorum,) to levy the said sums, and all arrearages, of every one that shall refuse to contribute, according as they shall be assessed, by distress and sale.

And by 17 *Geo. 2. c. 38.* the goods of any person assessed, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the said county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath thereof before some justice of any other county or precinct, (which oath shall be certified under the hand of such justice on the warrant,) such goods may be levied in such other county or precinct; and if any person find himself aggrieved by such distress, he may appeal to the next general or quarter sessions for the county or precinct where the assessment was made.

And by 43 *Eliz. c. 2.* for want of such distress, such two justices may commit the party to the common gaol of the county, there to remain, without bail or mainprise, until payment.

By 17 *Geo. 2. c. 38.* if any person shall neglect to pay any sum that he shall be rated to, the succeeding overseers are to levy such arrears, and out of the money so levied reimburse their predecessors all sums which they have expended for the use of the poor, and which are allowed to be due to them in their accounts.

By 26 *Geo. 2. c. 18.* all justices may execute all acts, so far as the same relate to parochial taxes, levies, or rates, notwithstanding any such justices are rated to or chargeable with any such rates, provided that nothing herein shall authorize any justice to act in the determination of any appeal to the sessions from any matter relating to any parish or place where such justice is so taxed or chargeable.



By 17 G. 2. c. 18. when any distress shall be made for money justly due for the relief of the poor, the distress itself shall not be deemed unlawful, nor the party making it a trespasser on account of any defect in the warrant for the appointment of such overseers, or in the rate or in the warrant of distress; nor shall the party distraining be deemed a trespass *ab initio* on account of any irregularity afterwards done by him; but the party aggrieved by such irregularity, shall recover satisfaction, for the special damage sustained, and no more, in an action of trespass or on the case. Provided that where the plaintiff recover, he shall be paid his costs. But no plaintiff shall recover for any irregularity as aforesaid, if tender of amends hath been made by the party distraining before such action brought.

III. *Relief and Employment of the Poor.* The 43 Eliz. c. 2. enacts, that the churchwardens and overseers of every parish shall take order from time to time, with the consent of two justices (one to be of the quorum) dwelling in or near the same parish or division, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers be thought able to keep and maintain their children; and for setting to work all such persons married or unmarried, having no means to maintain them, and using no ordinary and daily trade: and also, to raise weekly or otherwise (by taxation as aforesaid) a convenient stock of flax, hemp, wool, thread, iron, and other necessary stuff, to set the poor on work: and also, competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work; and also for the putting out such children to be apprentices.

And the said churchwardens and overseers shall meet together at least once every month in the church upon the Sunday in the afternoon after divine service, to consider of some good course to be taken, and of some meet order to be set down in the premises.

And the said justices, or one of them, shall send to the house of correction or common gaol, such as shall not employ themselves to work, being appointed as aforesaid: and any two justices to commit to prison the churchwardens and overseers which shall refuse to account.

And it shall be lawful for the churchwardens and overseers, by leave of the lord of the manor whereof any waste or common within their parish is parcel, to build in such waste at the charges of the parish, or of the hundred or county as aforesaid, houses of dwelling for the poor, which cottages shall not be used for any other habitation, but only for impotent and poor of the parish.

The churchwardens and overseers may, with the consent of two justices, (whereof one of the quorum,) and where there are no more than one, with the assent of that one justice, set up any trade, only for the setting on work and relief of the poor.

By the 9 G. 1. c. 7. it is enacted, that the churchwardens and overseers in any parish, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry, or other

parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, may purchase or hire any house or houses, in the same parish, township, or place, and contract with any person or persons, for the lodging, keeping, maintaining, and employing, any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ them, and take the benefit of the work, labour, and service, of any such poor persons, who shall be maintained in any such house or houses, for the better maintenance and relief of such poor persons who shall be there maintained. And any poor person who shall refuse to be lodged, kept, or maintained, in such house or houses shall be put out of the parish book, and shall not be entitled to receive relief from the churchwardens and overseers.

This act, however, has since been altered by the 36 *G. 3. c. 23.* which enacts, that overseers, with the approbation of the parishioners or any justice, may relieve poor persons at their own houses. Justices may also order relief to poor persons at their own houses; but the cause of ordering such relief shall be assigned on the order of the justice. But this is not to extend to places where houses of industry are provided under 22 *G. 3. c. 83.* or under any special act.

By 9 *G. 1. c. 7. s. 4.* it is provided, that where any parish, town, or township, shall be too small to purchase or hire such house or houses for the poor of their own parish only, it shall be lawful for two or more such parishes, townships, or places, with the consent of the major part of the parishioners or inhabitants, in vestry or other public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice, dwelling in or near such parish or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes or places uniting, and there to keep, maintain, and employ such poor of the respective parishes so uniting, and to take and have the benefit of their work, labour, or service, for the better maintenance and relief of the poor there kept, maintained, and employed. And if any poor person in the parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes or places, he shall be put out of the collection book, and not entitled to ask relief.

But no poor person, or his apprentice, or child, shall acquire a settlement in the parish or place to which they are removed by virtue of this act; but their settlement shall remain in such parish or place, as it was before such removal. It is, however, wisely enacted, by the 45 *G. 3. 54.* that no contract made by the churchwardens and overseers with any person for the lodging, keeping, maintaining, or employing of the poor of such parish or parishes, where two or more are united, and for taking the benefit of their work, labour, and service, for their better maintenance and relief,



shall be valid, binding, or effectual, unless the person during the continuance of the contract be resident within the parish contracting, or within the parish in which such poor shall be lodged.

Nor unless one or more responsible householders, resident in such parish, and to be approved of by the churchwardens, or overseers, shall, at or before the signing of such contract, by their joint and several bond, with a penalty in not less than the amount of one half of the assessment to the poor's rate of such parish, or united parishes, for the year next but one preceding that in which such contract shall be entered into, give security to the said churchwardens and overseers for the true and faithful observance and performance of such contract, on the part of the person so to be contracted with as aforesaid. Nor unless such contract shall be approved of and signed by two justices of the peace acting for such county, in which such parish, or united parishes, or one of them shall be situated.

And all contracts entered into otherwise, shall be absolutely null and void to all intents and purposes. And every contract entered into conformably to this act, with any person who shall remove from, and cease to reside in the parish, before the expiration of the whole time for which such contract shall be intended to have continuance, shall also from the time of such removal cease. But the removal of such person shall not vacate the security entered into; but the same shall continue in full force for the indemnification of the churchwardens and overseers against any loss or expense incurred in consequence of such non-performance of such contract and of such removal. And nothing in this act shall extend to any parish, township, or place, where the poor are maintained under any special act of parliament. Nor to make void any contract entered into before June 27th, 1805.

But the legislature has not only provided for the relief of the poor, its paternal attention has been directed to seeing that proper care be taken of them. Accordingly the 30 G. 3. c. 49. s. 1. enacts that it shall be lawful for any justice of peace, or any physician, surgeon, or apothecary, authorized, by warrant under the hand and seal of such justice, or for the officiating clergyman of the parish, so authorized, to visit in the day-time any parish workhouse, or house kept for the maintenance of the poor of any parish or place, within the county or division wherein such justice shall be resident and have jurisdiction, to examine into the state of the poor people therein, and the food, clothing, and bedding of such poor people, and the state of such house; and if upon such visitation the said justice or persons authorized shall find any cause of complaint, then such justice or persons authorized shall certify the state of such house, and the poor therein, and of their food, clothing, and bedding, to the next quarter sessions, under their hands and seals; and such justice or persons authorized as aforesaid, shall cause the overseers, or master of the house, to be summoned to appear at the sessions, to answer such complaint; and such sessions, on hearing the parties, shall make such orders and regulations for the removing of

any cause of complaint contained in such certificate, as to them shall seem meet; and all the parties shall abide by such orders.

In case, however, any justice, or persons authorized, shall upon such visitation, find any of the poor afflicted with any infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor, then if such visitation be made by a justice, he shall apply to another justice, and certify to him the state of the poor in such house; or if such visitation shall be made by the persons authorized as aforesaid, such persons shall apply to two justices, and thereupon the said justices shall make such order therein, under their hands and seals, as they shall think proper, until the next sessions, at which sessions they are to certify the same under their hands and seals, who are to make such order for the further relief of the poor in such house, as to them shall seem meet; and the charges of relieving such poor shall be paid out of the poor rate of such place, in such manner as such sessions shall direct. But this act shall not extend to workhouses regulated by any special act of parliament.

By the 24 *G. 2. c. 40.* no license shall be granted for the retailing of spirituous liquors within any workhouse, or house of entertainment for any parish poor, and if the master or any officer there shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors to be sold, &c. or brought in, except such as shall be given by the direction of a physician, surgeon, or apothecary, and applied from the shop of some apothecary, he shall forfeit 100*l.* one moiety to the king, and the other with costs to the informer by action; and if he again offend, and be a second time convicted, he shall forfeit his office. And any justice, upon information upon oath, that any such spirituous liquors are kept and disposed of in any such place, may enter and search, or authorize any constable, or peace officer by warrant, to enter and search such place, and in case any spirituous liquors be found therein (except such as are directed to be used medicinally) such officer may seize and cause the same to be staved and destroyed. And no person shall carry or bring, or attempt to bring any distilled spirituous liquors (except in the way of medicine) into any such place as aforesaid; and if any person offend therein, the master or other officer, or his servants, may apprehend such person, and carry him before a justice; and if by the oath of one witness, or otherwise, the justice convict such person, he shall commit him to prison, or the house of correction, for not exceeding three months, unless he immediately pay not exceeding 20*l.* nor less than 10*l.*; to be paid one moiety to the informer, and the other moiety to the use of the poor of such house. Every master of such poor-house shall procure a copy of the three preceding clauses to be printed or written, and hung up in one of the most public places of the house, and renew the same from time to time, so that it may always be kept legible, on pain of forfeiting 40*s.* to be levied by warrant of any justice on conviction, in a summary way, by the oath of one wit-



ness; and any justice may enter into any such place within his jurisdiction, and demand a sight of such copy, and if not forthwith shown him, he may immediately convict such master; one moiety of the penalty to be paid to the informer, and the other moiety (or the whole if there is no informer) to the poor of such house.

By stat. 3 *W. c.* 11. there shall be provided and kept in every parish, a book wherein the names of all persons who receive collection, shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity, and yearly in Easter week, or as often as shall be thought convenient, the commissioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all other persons receiving collections to be called over, and the reasons of their taking relief examined, and a new list made and entered, of such persons as they shall allow and think fit to receive collections.

To prevent fraudulent applications for relief, the 9 *G. 1. c. 7. s. 1.* enacts that no justice of the peace shall order relief to any poor person, till oath be made before such justice of some matter which he shall judge to be a reasonable cause for such relief, and that the person had applied for relief to the parishioners at some vestry or public meeting, or two of the overseers, and was by them refused; and till such justice has summoned two of the overseers to show cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear. And the person, whom justice shall order to be so relieved, shall be entered in the parish books as one of those who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer of any parish shall (except on sudden occasions) bring to the account of the parish any monies he shall give to any poor person who is not registered in the parish book, on forfeiture of 5*l.* to be levied by distress and sale, by warrant of two justices, who shall have found him guilty of such offence; to be applied for the use of the poor by direction of the justices.

And by the 9 *G. 3. c. 37.* overseers are prohibited from relieving the poor in any other than the good and lawful money of Great Britain, on pain of forfeiting for each offence 10*s.* nor more than 20*s.* recoverable by distress and sale, and applicable to the poor, under the justices direction. Such are the principal legislative provisions relative to the poor. For the legal decisions thereon, the reader (who is desirous of investigating this subject) is referred to the authorities cited in the article *OVERSEERS* (which see) and to Mr. Nolan's lucid *Treatise on the Poor Laws*.

**PORTERAGE.** By stat. 39 *G. 3. c. 58.* no innkeeper, warehouse-keeper, or other person, to whom any box, basket, package, parcel, truss, game, or other thing whatsoever, not exceeding fifty-six pounds weight, or any porter or other person employed by such inn-keeper, warehouse-keeper, or other person, in porterage, or delivery of any such box, parcel, &c. within the cities of

London, Westminster, or Borough of Southwark, and their respective suburbs, and other parts contiguous, not exceeding half a mile from the end of the carriage pavement, in the several streets and places within the above mentioned limits, shall ask or demand, or receive or take, in respect of such portorage or delivery any greater rate or price than as follows :

Not exceeding a	quarter of a mile	<i>threepence.</i>
-----	half a mile	<i>fourpence.</i>
-----	one mile	<i>sixpence.</i>
-----	one mile and a half	<i>eightpence.</i>
-----	two miles	<i>tenpence.</i>

For every further distance, not exceeding half a mile, three-pence additional.

Persons asking or receiving more than the above rates, shall for every such offence, forfeit a sum not exceeding 20*s.* nor less than 5*s.*

**POSTHUMOUS CHILDREN.** Children born after the decease of their father.

A posthumous child, either of the whole, or half blood, shall take under the statute of distribution.

By 10 and 11 *W. 3. c. 16.* where estates are limited in remainder to the lawful issue of the body of any person, a posthumous son or daughter may take such estate, as if born in the life-time, although there be no limitation to trustees to preserve the contingent remainders.

**POST OFFICE.** A general post office was erected by the 12. *Car. 2. c. 35.* which by the 3 *G. 1. c. 7.* was made perpetual and a part of the general fund.

No action can be maintained against the postmaster-general for the loss of bills or articles sent in letters by the post, and lost.

Many attempts have been made by postmasters in country towns, to charge an half-penny or penny each letter, on delivery at the houses in the town above the parliamentary rates, under pretence that they were not obliged to carry letters out of the office gratis : but it has been repeatedly decided, that such demand is illegal, and that they are bound to deliver the letters to the inhabitants within the usual and established limits of the town, without any addition to the rate of postage.

The following are the principal regulations relative to the postage of letters, and the management of the post office.

I. *Rates of postage.* These have been altered by various acts : the rates now paid, were imposed by the 41 *G. 3. c. 7.* augmented by the 45 *G. 3. c. 11.* and the 52 *G. 3. c. 88.* Of this last augmentation separate accounts are to be kept for ten years, and the proceeds thereof are to form part of the permanent public revenue. But the last additionally imposed rates do not extend to Jersey, Guernsey, or the Isle of Man, nor to the soldiers' or seamen's letters sent under the 35 *G. 3. c. 53.*

II. *Franking of letters.* Various public officers are by different



statutes permitted to frank letters, provided they be certified by indorsement to be on his majesty's service.

By the 9 *G. 3. c. 35.* members of parliament may frank printed newspapers forty days before or after any prorogation; and the clerk assistant and reading clerk of the house of lords, and out-door clerk of the house of commons, are not to pay postage.

But by the 24 *G. 3. c. 37.* the whole superscription, on every letter to pass free, shall be the handwriting of the member directing the same, and shall have indorsed thereon the name of such member, together with the name of the post town, from which the same is intended to be sent, and day, month, and year, when the same shall be put into the post office; the day of the month to be in words at length, and the whole to be of the handwriting of the member; and such letter is to be put into the post office the day on which it is franked; and no letter to any member of either house is to be exempted from the duty, unless such letter shall, during the sitting of any session of parliament, or within forty days before or after the summons or prorogation of the same, be directed to any such member at the place where he shall actually be, at the time of delivery thereof, or at his usual place of residence in London, or at the house of parliament, or the lobby thereof. Persons who, by virtue of their offices, are authorized to send and receive letters duty free, may continue so to do under the same restrictions as members of parliament; but this is not to extend to the twopenny-post. Counterfeiting the handwriting of any person in the superscription of any letter, in order to evade the duty of postage, is felony, and transportation for seven years.

By 35 *G. 3. c. 52.* no letter to or from any member of either house of parliament, exceeding one ounce, exempt from postage.

Nor any letter, unless the member directing it be within twenty miles of the post town, on the day or day before it is put into the office.

No member to send more than ten, or receive more than fifteen, letters free daily; and the postage shall be charged for letters exceeding the limited number on those of the lower rates.

Persons authorized officially to send and receive letters to continue so to do; and votes, proceedings in parliament, and newspapers may be sent in open covers as usual.

By 42 *G. 3. 63.* members of parliament may send daily by post, within the United Kingdom, ten letters, and receive fifteen, not exceeding one ounce each, free from postage.

The superscription of letters sent shall be of the handwriting of the member, with the name of the post town and date.

Forging the superscription, or altering the date thereof, is felony, punishable by seven years' transportation. Persons entitled to send letters free may, in case of bodily infirmity, authorize a person to write the superscription, and, on notice to the postmaster, such letters shall go free. Members, and clerks of both houses, may send votes and newspapers free in covers open at the sides, as also persons heretofore authorized to send the same.

Packets so sent may be inspected at the post office, and if found to conceal any thing, they shall be charged treble postage; and unstamped newspapers shall be sent to the stamp office.

Any person may send votes and newspapers by the post to Ireland, at the rate of 1*d.* for each, and newspapers from Ireland at the like rate, if left open at both ends.

By the 46 *G. 3. c. 92.* seamen in the royal navy may send single letters, being superscribed by their commanding officer, by the post, on paying 1*d.* for each; and they may receive single letters free from postage, 1*d.* having been paid, when put into the office: but this privilege does not extend to commissioned or warrant officers, midshipmen, or master's mates. In like manner, sergeants, corporals, drummers, trumpeters, fifers, and privates of the army, militia, fencibles, artillery, or marines, may send letters in like manner, being superscribed by their commanding officer, on paying 1*d.* for each, and may receive letters free from postage, 1*d.* having been paid when put into the post office; but this does not extend to commissioned or warrant officers.

Penalty on commanders franking letters not from such men, 5*l.* And persons not being such commanders franking letters, also forfeit 5*l.* Persons addressing letters to seamen or soldiers intended for others, are also to forfeit 5*l.* Persons obtaining the signature of a commanding officer to letters not on the private concerns of their men, forfeit 5*l.*

The penalties may be recovered before any justice, and go one moiety to the king and the other to the informer, and in default of payment to be committed for one month.

By 52 *G. 3. c. 146. s. 11.* all letters, sent to the registrars of dioceses, and indorsed agreeably to that act, are to go free of postage.

III. *General clauses relative to the post office:*—By the 52 *G. 3. c. 143.* if any deputy, clerk, agent, letter carrier, post boy, rider, or any other person employed in the post office of Great Britain, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the said office, shall, after the passing of this act, secrete, embezzle, or destroy any letter or packet, or bag or mail of letters with which he or she shall have been intrusted in consequence of such employment, or which shall in any other manner have come to his or her hands or possession, whilst so employed, containing the whole or any part or parts of any bank note, bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, dividend warrant, either of the bank, South Sea, East India, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seamen's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, American provincial bill of credit, goldsmith's or banker's letter of credit, or note for or re-



lating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money: or shall steal and take out of any letter or packet with which he or she shall have been so intrusted, or which shall have so come to his or her hands or possession, the whole or any part or parts of any such bank note, bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, dividend warrant, either of the bank, South Sea, East India, or any other company, society, or corporation, navy or victualling of transport bill, ordnance debenture, seamen's ticket, state lottery ticket, or certificate, bank receipt for payment of any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, American provincial bill of credit, goldsmith's or banker's letter of credit or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money; every person so offending, being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

And if any person shall, after passing of this act, steal and take from any carriage, or from the possession of any person employed to convey letters sent by the post of Great Britain, or from or out of any post office or house or place for the receipt or delivery of letters or packets, or bags or mails of letters sent or to be sent by such post, any letter or packet, or bag or mail of letters sent or to be sent by such post, or shall steal and take any letter or packet out of any such bag or mail, every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy; and such offences shall and may be inquired of, tried, and determined either in the county where the offence shall be committed, or where the party shall or may be apprehended.

Persons assisting others employed by the post office, in any of the before mentioned offences, or knowingly buying or receiving any of the securities, &c. so stolen or embezzled, shall suffer death as felons without benefit of clergy.

**POUND.** A common pound belongs to a lordship, or village, and there ought to be such a pound in every township, kept in repair by those who have used to do it time out of mind; the oversight whereof is to be by the constable or steward of the leet.

**PRÆMUNIRE.** This punishment is inflicted upon him who denies the king's supremacy the second time; upon him who affirms the authority of the pope, or refuses to take the oath of supremacy; upon such as are seditious talkers of the inheritance of the crown; and upon such as affirm that there is any obligation by any oath, covenant, or engagement whatsoever, to endeavour a change of government either in church or state; or that both or either house of parliament have or hath a legislative power without the king, &c.

The judgment in *præmunire*, at the suit of the king against the defendant, being in prison, is, that he shall be out of the king's protection; that his lands and tenements, goods and chattels, shall be forfeited to the king; and that his body shall remain in prison at the king's pleasure; but if the defendant be condemned upon his default of not appearing, whether at the suit of the king or party, the same judgment shall be given as to the being out of the king's protection and the forfeiture; but instead of the clause that the body shall remain in prison, there shall be an award of a *ca-piatur*.

Upon an indictment of a *præmunire*, a peer of the realm shall not be tried by his peers.

**PREROGATIVE**, is a word of large extent, including all the rights and privileges which by law the king hath, as chief of the commonwealth, and as intrusted with the execution of the laws.

All jurisdiction exercised in these kingdoms that are in obedience to our king, is derived from the crown; and the laws, whether of a temporal, ecclesiastical, or military nature, are called his laws; and it is his prerogative to take care of the due execution of them. Hence all judges must derive their authority from the crown, by some commission warranted by law, and must exercise it in a lawful manner, and without any the least deviation from the known and stated forms.

The king, as the fountain of justice, hath an undoubted prerogative in electing officers, and all officers are said to derive their authority mediately or immediately from him: but though all such officers derive their authority from the crown, and from whence the king is termed the universal officer or disposer of justice, yet it hath been held that he hath not the office in him to execute it himself, but is only to grant or nominate; nor can the king grant any new powers or privileges to any such officers, but they must execute their offices according to the rules established and prescribed them by law.

**PREROGATIVE COURT**, the court wherein all wills are proved, and all administrations taken, which belong to the archbishop by his prerogative; that is, in case where the deceased had goods of any considerable value out of the diocese wherein he died; and that value is ordinarily 5*l.* except it be otherwise by composition between the said archbishop and some other bishop, as in the diocese of London it is 10*l.*; and if any contention grow between two or more touching any such will or administration, the cause is properly debated and decided in this court:

**PRESENTATION**. Presentation to an advowson is the act of a patron offering his clerk to the bishop of the diocese, in order to be instituted in a church or benefice of his gift which is void.

No aliens born can present; neither can papists, nor guardians by soccage or nurture. For valuable considerations, papists may grant advowsons, provided the grant be made to protestant purchasers, and for the benefit of protestants.

Coparceners, being but one patron, must agree in presenting a



person: if they cannot agree, the eldest shall first present, and then the other tenants in common and joint tenants must unite in presentation. The right of presentation may be lost in various ways, as by attainder of the patron, by simony, outlawry, &c.

**PRESENTMENT OF OFFENCES**, is that which the grand jury find of their own knowledge, and present to the court, without any bill of indictment laid before them at the suit of the king; as a presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer it. There are also presentments by justices of the peace, constables, surveyors of the highways, churchwardens, &c.

**PRESUMPTIVE HEIR**, is one who, if the ancestor should die immediately, would, in the present circumstance of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present expectation may be cut off by the birth of a son.

**PRIMOGENITURE**, the title of an elder brother in the right of his birth.

**PRINCIPAL AND ACCESSARY**. The principal is the person who actually commits any crime; and the accessory is he who is not the chief actor, but is somewhat concerned therein, either before or after the felony committed, assisting to him in the doing thereof.

**PRINTERS**. By 39 *Geo. 3. c. 79.* all printers shall give a notice in writing to the clerk of the peace, of the number of their presses, who shall grant a certificate thereof, and file the notice, and transmit an attested copy to the secretary of state. Persons keeping presses or types without notice, or using them in any place not expressed therein, to forfeit 20*l.* But this is not to extend to his majesty's printers, or the universities of England. Letter-founders and printing-press-makers shall give a notice, in writing, of the places where they carry on business to the clerk of the peace, who shall grant a certificate thereof, and file the notice, and transmit an attested copy to the secretary of state: and persons carrying on such business without giving such notice are to forfeit 20*l.* An account is to be kept of types and printing-presses sold, and to whom, to be produced to any justice when required, on pain of 20*l.* The name and abode of the printer shall be printed on every paper or book; and printers omitting so to do, and persons dispersing papers without such name and place of abode, shall forfeit 20*l.* But this is not to extend to papers printed by authority of parliament. Printers shall keep a copy of every paper they print, and write therein the name and abode of their employer, on pain of 20*l.* for neglect, or refusing to produce the copy within six months. Any person in whose presence a printed paper shall be sold without the name and abode of the printer, may seize the party, and convey him before a justice, to determine whether he hath offended against

this act. This is not to extend to impressions of engravings, or printing names and addresses, or the articles in which the party deals, or papers for the sale of estates or goods, nor to alter any provisions respecting newspapers.

A justice may empower a peace officer to search for presses and types which he suspects to be illegally used, and to seize them and the printed papers found. Prosecutions for any penalty under this act must be commenced within three months after the penalty incurred. Pecuniary penalties exceeding 20*l.* may be recovered in the superior courts with full costs, and not exceeding 20*l.* before any justice of the peace, who may levy the same by distress; and in default thereof, commit the party for not more than six nor less than three calendar months; and the penalties go one moiety to the plaintiff or informer, and the other to his majesty.

**PRINTS AND ENGRAVINGS.** By the 8 *Geo. 2. c. 13.* persons who shall design, engrave, etch, or work in mezzotinto or chiaro oscuro, any historical or other prints, shall have the sole right of printing and publishing the same for fourteen years, so as the proprietor's name is affixed to each print. Printsellers or others pirating or copying the same are to forfeit the plates, and also 5*s.* for every copy found in their custody, if prosecuted within three months, half the penalty to the king and half to the informer; but this act does not extend to purchasers of plates from the original proprietors.

By 7 *Geo. 3. c. 38.* the original inventors, designers, or engravers, of historical or other prints, and such who shall cause prints to be done from works of their own invention, and also such as shall engrave any print taken from any picture, drawing, model, or sculpture, are entitled to the benefit and protection of the above act; and those who shall engrave or import for sale copies of such prints, are liable to the like penalties, with costs, so as prosecuted within six months. The right intended to be secured by this and the above act is extended, and vested in the proprietors for the term of twenty-eight years from publication.

By 17 *Geo. 3. c. 57.* if any engraver shall, within the above term, engrave or etch any print without the consent of the proprietor, he shall be liable to an action for damages and double costs.

**PRISONS,** places of confinement for persons guilty of offences, or for debtors. Each county has a prison, where persons taken within its limits are committed. There are prisons also belonging to the courts of chancery, king's bench, common pleas, exchequer, and marshalsea.

**PRISONERS OF WAR.** By the 52 *Geo. 3. c. 156.* every person who shall hereafter knowingly and wilfully aid or assist any alien enemy of his majesty, being a prisoner of war in his majesty's dominions, whether such prisoner shall be confined as a prisoner of war in any prison or other place of confinement, or shall be suffered to be at large in his majesty's dominions, or any part thereof, on his parole, to escape from such prison, or other place of confine-



ment, or from his majesty's dominions, if at large upon parole, shall, upon being convicted thereof, be adjudged guilty of felony, and be liable to be transported as a felon for life, or for such term of fourteen or seven years as the court before whom such person shall be convicted shall adjudge.

And every person who shall knowingly and wilfully aid or assist any such prisoner at large on parole in quitting any part of his majesty's dominions where he may be on his parole, although he shall not aid or assist such person in quitting the coast of any part of his majesty's dominions, shall be deemed guilty of aiding the escape of such person under the provisions of this act.

Persons assisting on the high seas such prisoners to escape, shall also be adjudged guilty of felony, and be liable to be transported as aforesaid; and such offences committed upon the high seas, and not within the body of any county, shall and may be inquired of, tried, heard, determined, and adjudged in any county within the realm, in like manner as if such offences had been committed within such county,

This act shall not prevent any person committing any offence mentioned in this act from being prosecuted in such manner as he might by law have been prosecuted if this act had not passed; but nevertheless no person prosecuted otherwise than under the provisions of this act shall be liable to be prosecuted for the same offence under the provisions hereof; and no person prosecuted under the provisions of this act shall, for the same offence, be liable to be otherwise prosecuted.

PRIVY COUNCIL, is the principal council belonging to the king, and is generally called, by way of eminence, the *council*.

Privy counsellors are made by the king's nomination, without either patent or grant; and, on taking the necessary oaths, they become immediately privy counsellors during the life of the king that chooses them, but subject to removal at his discretion. No inconvenience now arises from the extension of the number of privy council, as those only attend who are especially summoned for that particular occasion.

PROCESS. It is but consonant to justice, and to right reason and equity, that the accused should be as well heard, to clear himself, as others are to accuse him.

Therefore, if he be present, and confess the indictment, he shall be forthwith committed till he make fine, or give sureties.

If he be absent, process shall be awarded against him to come and make his answer.

The warrant of a justice is only to attach and convene the party before indictment, and may be either in the name of the king or of the justice. Process is always in the name of the king, and after an indictment found, or other proceedings.

The authority of making process upon indictment is given by express words in the commission; but where a man is indicted in one county who liveth in another, there must be an *alias* after the first *capias* before he can be outlawed, and there must be three

months between the *teste* and return thereof. In other cases by some statutes, and sometimes to two justices out of their sessions, sometimes to one single justice.

It is likewise in other cases implied necessarily in the words hear and determine, as where power is given to the justices out of sessions to hear and determine; for otherwise the justices cannot proceed, unless the party come in gratis.

If the party be absent, first a *venire* is usually awarded by the justices under their own *teste*; and if thereupon he be returned sufficient, and makes default, a *distringas* infinite is to be awarded till he come in; but if a *nihil habet*, &c. be returned at first, then after a *venire facias*, a *capias*, and then an *alias*, and after a *pluries* shall go forth, and after that an *exigent*, till the party yield himself, be taken, or outlawed.

These are the ordinary processes upon indictments of trespass against the penal statutes, not being felony, or greater offence.

These processes are to be directed to the sheriff, except himself or his officers be parties, and then it seemeth such process shall be directed to the coroners of the county.

The king's process must be with a *non omittas propter aliquam libertatem*, &c. but the *teste* may be under the name of a justice.

If the party be outlawed, the justices can make no *capias utlagatum*, but must certify the outlawry to the king's bench.

Process (as well of *capias*, &c. as of outlawry) may be stayed by a *supersedeas* from other justices, testifying that the party hath found sureties to answer or to pay his fine.

The authority of justices in sending these processes out of sessions is beyond the bounds of their commission, and therefore they must have the authority of some statute, either express or at least by implication.

By stat. 11 *H. cap.* 6. it is provided that no plea, suit, or process, taken before justices, shall be discontinued by a new commission of the peace.

One indicted of treason or trespass in one county is imprisoned in another, the justices may award an *habeas corpus* to remove him before themselves.

Process upon indictment of felony may be sent into any foreign county.

Process upon indictment of felony, is two *capias's* and an *exigent*.

Process upon informations must be such as the statute whereupon they are grounded doth appoint.

If the sheriff's name is not indorsed upon the *venire facias*, or *distringas*, it is erroneous.

Information is made in the sessions that an alehouse-keeper hath done any thing whereby he hath forfeited his recognisance, the justices of peace may award process against him, to show cause why he should not forfeit his recognisance; but *quær.* what process.

Process cannot be awarded by the justices of peace upon any



forfeited recognisance, except alehouses, but they must certify them to the higher courts.

If a man is indicted for murder, there shall be but one *capias*, and then an *exigent*.

But by 25 *Ed. 3. cap. 14.* if for robbery, there shall be two *capias's* before the outlawry.

A justice of the county or town corporate may award as many writs of *capias* as are necessary, to any sheriff or officer in another county where a servant or apprentice in husbandry, &c. resides, who hath departed from his master, contrary to 5 *Eliz. cap. 4.* and these may be made returnable before himself what time he pleaseth.

Justices in a county where a person is indicted of treason, felony, or trespass, may award process to the sheriff of another county, where the party is abiding, to apprehend him.

**PROFANENESS.** See **BLASPHEMY.**

**PROHIBITION**, is a writ properly issuing only out of the court of king's bench, being the king's prerogative writ; but, for the furtherance of justice, it may now also be had in some cause out of the court of chancery, common pleas, or exchequer, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, doth not belong to that jurisdiction, but the cognisance of some other court.

Upon the court being satisfied that the matter alledged by the suggestion is sufficient, the writ of prohibition immediately issues, commanding the judge not to hold, and the party not to prosecute the plea. And if either the judge or party shall proceed after such prohibition, an attachment may be had against them for the contempt, by the court that awarded it, and an action will lie against them to repair the party in damages.

**PROMISE**, is where, upon a valuable consideration, persons bind themselves by words to do or perform such a thing agreed on: it is in the nature of a verbal covenant, and wants only the solemnity of writing and sealing to make it absolutely the same. Yet for the breach of it the remedy is different; for instead of an action of covenant, there lies only an action upon the case, the damages whereof are to be estimated and determined by the jury.

**PROMISSORY NOTE.** See **BILLS.**

**PROPHECIES.** If any one shall publish by writing, speech, or deed, &c. any phantastical or false prophecy, upon or by occasion of arms, fields, beasts, &c. or by reason of any time, year, day, &c. he shall, for the first offence, be imprisoned a year without bail, and forfeit 10*l.*; for the second offence be imprisoned for life, and forfeit all his goods to the king and prosecutor.

All and every justice of assize, justice of oyer and terminer, and justices of the peace, have authority to hear and determine these offences, so as the party be accused within six months.

**PROTEST**, is where one openly affirms that he doth either not

at all, or but conditionally, yield his consent to any act, or unto the proceeding of a judge in court, wherein his jurisdiction is doubtful, or to answer upon his oath farther than by law he is bound.

Protest, is also that act by which the holder of a foreign bill of exchange declares that such bill is dishonoured.

Protest, is also that act of a master, on his arrival with his ship from parts beyond the seas, to save him and his owners harmless and indemnified from any damage sustained in the goods of her lading, on account of storms.

PROTHONOTARY, is a chief officer or clerk of the common pleas and king's bench; the former hath three, and the latter but one, whose office is to record all civil actions, as the clerk of the crown office doth criminal causes in that court. Those of the common pleas enter and enrol all manner of declarations, pleadings, assizes, judgments, &c.

PUBLIC WORSHIP. All contemners of public worship shall be *ipso facto* excommunicated; and if any person shall disturb a preacher in his sermon, by word or deed, he shall be apprehended and carried before a justice, who shall commit him to gaol for three months.

PURCHASE, signifies the buying or acquisition of lands or tenements with money, or by deed or agreement, and not obtaining it by descent, or hereditary right.

QUAKERS. By a statute made 13 and 14 *Car. 2. cap. 1.* persons called Quakers were not to assemble above five in number, of the age of sixteen years or more, under pretence of religious worship not established by law, under penalty of 5*l.* for the first offence, and for want of distress and non-payment within one week after conviction, three months' imprisonment in gaol or house of correction. For the second offence 10*l.* and six months' imprisonment. The third offence the offender shall abjure the realm, or the king may order the offender to be transported to any of the plantations beyond sea.

But they were exempted from these penalties by the 1 *W. and M. cap. 18.* and by 7 and 8 *W. 3. cap. 34.* every Quaker, where an oath is lawfully required, should, instead of the oath, make a solemn declaration in the form in that act prescribed. But by the 8 *Geo. 1. cap. 6.* instead of the solemn affirmation or declaration prescribed by that act, they are to make the solemn declaration or affirmation following:

I, A. B. do solemnly, sincerely, and truly, declare and affirm, &c.

And instead of the declaration of fidelity appointed to be made and subscribed by Quakers, by 1 *W. and M. cap. 18.* they are to make and subscribe the declaration of fidelity mentioned in 8 *Geo. 1. cap. 6.*

And instead of the form prescribed by 1 *W. and M. cap. 18.* for the effect of the abjuration oath, they are to take that mentioned 8 *Geo. 1. cap. 6.* and the Quakers subscribing the declaration of



fideliſty, and the chriſtian belief, before two juſtices, ſhall be entitled to the benefit of that act.

By 7 and 8 *W. 3. cap. 34.* made perpetual by 1 *Geo. 1. cap. 7.* no Quaker ſhall be a witneſs in criminal cauſes, or ſerve on juries, or bear any office or place of profit in the government; and the abovesaid declaration ſhall be taken to be of the ſame force in all courts of juſtice as an oath, and ſhall in like manner incur the ſame penalties as if guilty of perjury; and all perſons authorized to adminiſter an oath are required to tender the abovesaid declaration, &c. to Quakers in the words appointed by 8 *Geo. 1. cap. 6.*

Quaker reſuſing to pay tithes or church-rates, two next juſtices, uninterreſted, on complaint of any perſon, &c. may, by warrant, convene ſuch perſon reſuſing, and may examine (on oath, or in ſuch manner as by this act is provided) the merits of the cauſe, and determine accordingly, by order under hand and ſeal, provided the ſum does not exceed 10*l.* On reſuſal of payment, one juſtice may, by warrant, levy it by diſtreſs and ſale, rendering the overplus after charges allowed. Appeal to quarter ſeſſions, who may confirm or reverse the decree of two juſtices. On confirming, coſts ſhall be given to the appellanſt, to be levied by diſtreſs and ſale: not to be removed by *certiorari* unleſs the title of ſuch tithes be in queſtion. In caſe of appeal, no warrant of diſtreſs to be granted till appeal be determined. Juſtice may give coſts not exceeding 10*l.* by 1 *Geo. 1. cap. 7.*

QUARENTINE. By ſtat. 7 *Geo. 1. cap. 3.* the 9 *Ann. cap. 2.* is repealed, and by it it is enacted, that ſhips coming from places infected ſhall perform their quarentine in ſuch places, time, and manner, as the king ſhall appoint; and till they are diſcharged thereof, no perſon or goods therein ſhall come on ſhore, or into any other ſhip, &c. nor ſhall any go on board ſuch ſhip without license in writing under the hand of ſuch perſon who ſhall be appointed to ſee the quarentine performed. And all ſhips, perſons, and goods, &c. during ſuch quarentine, ſhall be ſubject to ſuch orders and directions therein as ſhall be made by the king, and notified by proclamation. And if any maſter or commander ſhall offend againſt this act, ſuch ſhip, with her tackle, apparel, and furniture, ſhall be forfeited to the king; and if any other perſon ſhall offend, thoſe appointed to ſee the quarentine performed may compel him, in caſe of reſiſtance, by force to return on board, there to remain, &c. And after quarentine ſhall, by oath of one witneſs, before one juſtice, be liable to pay not exceeding 20*l.* to be forthwith paid into the hands of the juſtice, who may give the informer a third part, and the reſt to the poor. In default of payment, to be ſent to the houſe of correction to hard labour for a month. Juſtices adjoining to counties or places where quarentine is performed are required to keep watches day and night, at moſt convenient places in their pariſhes, with orders not to permit any perſon to come on ſhore, or go on board any ſhips under quaren-

tine, except such as have the charge of seeing quarentine duly performed.

After the quarentine performed, and oath made by the master or persons having charge of the ship, and two of the persons belonging thereto, before the customer, comptroller, or collector of the port, or their deputies, or any justice of peace near adjoining, that such ship or vessel, and all and every the person and persons therein, have duly performed the quarentine; and that the said ship or vessel, and all the persons on board, are free from infection, the said customer and two justices are to give a certificate thereof; and thereupon the said ship, &c. to be liable to no further restraint, &c. and the officer, &c. before whom the oath is made, and by whom the certificate is given, shall demand no more than 1s. for each, besides the stamp duties: and after quarentine the goods imported are to be opened and aired, &c.

By the said statute it is enacted, that if any ship shall come from any place infected, or have any infected person on board, and the master, &c. shall not discover the same, he shall be adjudged guilty of felony without benefit of clergy.

Persons not infected, nor liable to quarentine, who shall enter any ship, &c. so appointed, *ut supra*, whilst any person infected, or under quarentine, shall be therein, are not to return without a proper license, but must perform their quarentine; and if such person shall actually escape before they have fully performed their quarentine, they shall be guilty of felony without benefit of clergy.

His majesty is empowered to order ships to be provided, or lazarets, for entertaining persons infected with the plague, or obliged to perform quarentine, and sheds and tents, &c. for opening and airing of goods in convenient places on waste grounds, &c. allowed by two justices of peace, under their hands and seals, paying a consideration, &c.

Any two justices next the place where any ship shall be performing quarentine, or wherein any infected place shall be situate, may order the inhabitants to keep sufficient watches by day and night, who are not to permit any persons or goods to depart out of the lines, &c. Inhabitants refusing to keep such watch, and persons refusing to serve as watchmen, being convicted by the oaths of two witnesses, shall forfeit not exceeding 100*l.* nor less than 10*l.* at the discretion of the justices; one moiety to the informer, and the other to the poor, leviable by distress and sale, and be committed to prison for two months, and till the penalty is paid. The charge of watches is to be maintained by the county in such manner as for county gaols and bridges.

If any officer of the customs, or other officer or person whatsoever, who is to see quarentine performed, &c. shall be guilty of any wilful breach or neglect of his duty on that behalf, he shall forfeit his office, and be incapacitated, and shall also forfeit 100*l.* one moiety to the king, the other to the prosecutor, to be recovered by action of debt, &c.



All small boats and vessels, under the burden of twenty tons, may be prohibited, by his majesty's proclamation, from sailing or passing out of any port or place of Great Britain, &c. in time of infection, till security be given in 500*l.* with sureties, as directed by this act, by bond, with condition, viz. That if such boat or vessel shall not go to or touch at any country, place, or port, to be mentioned for that purpose in such proclamation; and if the master or other person having charge of such boat, &c. or any mariner or passenger, shall, during the time of infection, go on board any other ship or vessel at sea, or permit or suffer any person to come on board such boat or vessel at sea, or shall receive any goods or merchandize whatsoever out of any other ship or vessel; and if such boat, &c. shall sail before such security given, it is forfeited, together with tackle, apparel, &c. to the king, and may be seized, sued for, and recovered in his majesty's exchequer.

The master and mariner of such boat or vessel, being thereof convicted on the oath of one or more credible witnesses, forfeits 50*l.* one moiety to the informer, the other to the poor of the parish where such offender shall be found. To be levied by distress; and for want of sufficient distress, to be committed to prison, without bail, for three months.

If any officer appointed to see quarentine performed, or any watchman, shall knowingly suffer any person or ship to depart, or goods to be conveyed out of any place infected, unless with license, he shall be guilty of felony.

All goods, after quarentine, are to be opened and aired at the places appointed, for such time as his majesty shall order; and in case of infection, his majesty may make orders concerning quarentine, &c. and notify the same by proclamation, to which all persons, civil and military, are to render obedience.

By 8 *Geo. I. cap. 25.* if any master shall quit his ship, or suffer any other so to do, &c. before quarentine performed, or shall not cause the ship or loading to be conveyed to the place appointed for quarentine, then every such ship shall be forfeited to his majesty, and the master forfeits 200*l.* Other persons quitting the ship are liable to the same penalty, and six months' imprisonment.

Officers of ships of war, forts, garrisons, &c. are to resist the entrance into ports of ships infected, and may use any kind of force and violence; and if any ship shall come from any place visited with the plague, or have persons or goods infected on board, and the master, &c. shall not discover it, he is to suffer as a felon.

Ships coming from infected places, or loaded with cargoes taken on board at any infected place, or from ships infected, such ships, goods, &c. may be burnt.

Persons aggrieved by any judgment of any justice or justices for any offence against the act 7 *Geo. I. cap. 3.* may appeal to the next quarter sessions, who are finally to determine the same, and to give reasonable costs, in case judgment go against the appellant.

Quarter sessions is to determine, assess, and settle differences concerning such rate, rent, or consideration, between persons interested and the persons appointed by his majesty, for grounds, where the waste or common is not sufficient; and their judgment and determination is final.

By 8 *Geo. 1. cap. 8.* it is enacted, that the above recited act of 7 *Geo. 1. cap. 3.* shall not continue in force any longer than till March 25th, 1723; and further, that it should be lawful for the king, by proclamation to be issued before December 12th, 1722, to prohibit all persons to go to, or to export any goods or commodities whatever, to any place infected before March 25th, 1723; and at the same time in like manner to prohibit all persons whatsoever to come from any country or place infected into Great Britain or Ireland, or the dominions thereunto belonging, and to import any goods or commodities.

All goods exported contrary to the meaning of such proclamation, and the vessels in which exported, shall be forfeited; and the persons going contrary to such proclamation are guilty of a *premunire*: and it shall be lawful for any person by force to hinder any such ship from entering any port; and if such ship shall enter notwithstanding, it shall be forfeited, and every person so offending shall be guilty of felony, without clergy: and all goods imported, and all persons procuring such goods to be imported, shall forfeit treble the value thereof; two thirds to the crown, the rest to the informer.

By stat. 1 *Geo. 2.* it is enacted, that when any place is infected with the plague, and an order is made by his majesty concerning quarantine, and notified as often as any ship shall attempt to enter into any port, the principal officer of the customs, or such person as shall be authorized to see quarantine performed, shall go off to such ship, and at a convenient distance demand of the commander the following particulars, viz. The ship's name, and the commander's name; at what place the cargo was taken on board; what places the ship touched at; whether such places were infected, and which of them; how long the ship was in her passage; how many were on board when the ship set sail; whether any, during the voyage, had been infected; how many died in the voyage, and of what distemper; what ships he, or his ship's company, with his privity, went on board, or had any of their company come on board his ship, and to what place such ship belonged; and also the contents of his lading, to the best of his knowledge. And if the ship ought to perform quarantine, the officers of the ships of war, or of any forts or garrisons, and all other officers, on notice to them given, are to oblige such ship to repair to the place appointed for the quarantine, and may use all necessary means for that purpose, whether by firing of guns upon such ship, or any other violence whatever: and if any ship shall come from a place visited with the plague, or have any person on board actually infected, and the commander conceal it, he shall be guilty of felony, without benefit of clergy; and if he do not make a true discovery



in any other of the particulars, he shall forfeit 200*l.*; moiety to the king, moiety to the prosecutor.

If any commander shall quit the ship, or permit others so to do, unless by proper license; or if he shall not, within convenient time after notice, cause the ship and lading to be conveyed to the place appointed for quarentine, he shall forfeit 500*l.*; moiety to the king, moiety to the prosecutor; and if any person shall quit the ship, by going on shore, or on board any other ship, all persons, by force and violence, may compel him to return on board, and he shall suffer six months' imprisonment, and forfeit 200*l.*

The proper officers are to compel all persons obliged to perform quarentine, and all merchandizes comprised within any order made and notified, to be conveyed to some of the ships or lazarets.

Persons refusing or neglecting to repair, within convenient time after notice, to the places appointed, or attempting to escape out of the same, before quarentine fully performed, the watchmen, and other persons appointed, may, by any kind of violence the case shall require, compel them to return to such ship, &c. And every such person shall be guilty of felony, without benefit of clergy.

All officers to whom it doth appertain to execute any orders, guilty of any wilful breach or neglect of their duty, shall forfeit their office and 100*l.* and be incapable to take a new grant.

All merchandizes imported in any ship coming from a place infected, or on board which any person shall be found infected, shall, after quarentine performed, be opened and aired in such place as shall be directed by order; and after such order shall be duly complied with, and proof made thereof on certificate and return of such writ to the commissioners of the customs, or to the commander in chief, being on the place in the isles of Guernsey, Jersey, &c. shall be forthwith discharged from any restraint; for which oath, certificate, and order, no fee shall be demanded.

As often as his majesty shall make any order concerning quarentine, and notify it by proclamation, it shall be read on the next Sunday after receipt, and the first Sunday in every month afterwards (during the time such order shall be in force) immediately after the prayers in all parish churches, and other places set apart for divine service, as shall be specified in such proclamation.

His majesty, by one or more proclamations, to be issued before the 24th of June, 1729, may prohibit all persons to go unto any country infected, to be specified in such proclamation; and also may forbid all persons to ship from Great Britain, &c. to any place infected, any commodities whatsoever before the 25th of December, 1729, under the penalties hereinafter-mentioned, and under such regulations as by such proclamations shall be prescribed.

His majesty may forbid all persons whatsoever to come from any kingdom infected, or to import any commodities from thence before the 25th of December, 1729.

Exporters of goods, contrary to the true meaning of such proclamation, shall forfeit double the value, to be ascertained and recovered as the value of any uncustomed or prohibited goods is by law.

If any person shall go to any place infected, he shall forfeit 500*l.* moiety to his majesty, moiety to the prosecutor; and if any ship or person coming from any place infected shall enter into, or any goods shall be landed out of, such ship into any of our ports, every person offending shall be adjudged guilty of felony, without benefit of clergy, and the ship and goods shall be forfeited; and every person, who after such proclamation, shall cause any goods to be imported contrary to such proclamation, shall forfeit treble the value; two thirds to his majesty, the charge of prosecution to be borne by him; and the other to the prosecutor.

In all proclamations prohibiting commerce, a reasonable time shall be allowed before the prohibition shall commence, regard being had to the distance of the place, and to the time within which notice may arrive at such infected place.

If any action shall be commenced against any person for any thing done in pursuance of this act, the defendant may plead the general issue, and on a verdict, &c. recover treble costs.

No attainder of felony shall work any corruption of blood, &c.

This shall commence from the 1st of June, 1728, and the same (except so much as enables his majesty to prohibit commerce between his subjects and those of another country) shall continue in force for two years, and from thence to the end of the then next session of parliament, and no longer.

**QUARTER SESSIONS.** The sessions of the peace is a court of record holden before two or more justices, (whereof one is of the quorum,) for the execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament.

The justices shall keep their sessions in every quarter of the year at least, and for three days if need be; to wit, in the first week after the feast of St. Michael, in the first week after the Epiphany, in the first week after Easter, and in the first week after St. Thomas, and oftener if need be.

Any two justices, (one whereof is of the quorum,) by the words of the commission of the peace, may issue their precept to the sheriff to summon a session for the general execution of their authority; and such session, holden at any time within that quarter of a year, is a general quarter sessions.

And such precept should bear teste, or be dated fifteen days before the return.

The sheriff also shall cause a jury to appear at such days and places as the said justices, or such two or more of them as aforesaid shall appoint.

There are many offences, which, by particular statutes, belong properly to this jurisdiction, and ought to be prosecuted in this court: as the smaller misdemeanours against the public or com-



monwealth, not amounting to felony; and especially offences relating to the game, highways, alehouses, bastard children, the settlement and provision of the poor, vagrants, servants' wages, apprentices and popish recusants. Some of these are proceeded upon by indictment; and others in a summary way, by motion and order thereupon, which order may, for the most part, unless guarded against by any particular statute, be removed into the court of king's bench by *certiorari*, and be there either quashed or confirmed.

QUEEN. The queen consort is an exempt person from the king by the common law, and is of ability and capacity to purchase and grant without the king; and is capable of taking lands or tenements of the gift of the king.

The Queen of England is either queen regent, queen consort, or queen dowager. The queen regent, regnant, or sovereign, is she who holds the crown in her own right, and by stat. 1 M. 1. stat. 3. c. 1. such a one has the same powers, prerogatives, rights, dignities, and duties, as if she had been a king. But the queen consort, who is the wife of the reigning king, has less powers; she has, however, many privileges superior to other married women. The queen consort is a public person, distinct from the king, and like an unmarried woman, can purchase lands, make leases, and do other acts of ownership, without the concurrence of her lord. She can also take a grant from her husband, which no other wife can. She may likewise sue and be sued alone, without joining her husband. She may also have a separate property in goods as well as lands, and has a right to dispose of them by will. In short, she is in all legal proceedings looked upon as a single and not as a married woman. And the common law has established this to prevent the king from being troubled with his wife's concerns. The queen has also some exemptions. She pays no toll; nor is she liable to any ameracements in any courts. But in general she is on the same footing with other subjects, being to all intents and purposes the king's subject. But the person of the queen is equally protected with that of the king. By the statute 25 Edw. 3. it is equally high treason to plot against the queen as against the king himself: and to violate or defile the queen consort amounts to the same crime, as well in the violator, as in the queen herself, if consenting. But the case is different in the husband of a queen regnant, who, though her subject, may be punished for treason committed against her, and is not guilty of treason for conjugal infidelity, because his infidelity cannot bastardize the heirs to the crown.

QUEEN DOWAGER. A king's widow is entitled to most of the privileges she enjoyed as queen consort, except that it is not high treason to conspire her death, or to violate her chastity; the succession to the crown not being thereby endangered. Yet still, for the royal dignity, none can marry a queen dowager, without special license from the king, on pain of forfeiting his lands and effects. But she, though a foreigner, after the king's death shall have dower, which no other alien has. If married to a subject, she

does not lose her privileges, as do dowager peeresses when married to commoners.

**RACK RENT**, the full extended yearly value of the land, &c. let by lease, payable by tenant for life or years.

**RAPE OF WOMEN**, is where a man hath carnal knowledge of a woman by force, and against her will; by 18 *Eliz. c. 7.* if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, whether with her consent or against it, he shall be punished as for a rape. And it is not a sufficient excuse in the ravisher, to prove that she is a common strumpet; for she is still under the protection of the law, and may not be forced. Nor is the offence of a rape mitigated, by showing that the woman at last yielded to the violence, if such her consent were forced by fear of death or duress; nor is it any excuse, that she consented after the fact.

**RECEIPTS**, are acknowledgments in writing of having received a sum of money or other value. A receipt is either a voucher for an obligation discharged or one incurred. Receipts for money above 40s. must be on stamps; but a receipt on the back of a bill of exchange or promissory note which is already stamped, is good without a farther duty. Writing a receipt on a stamp of greater value than the law requires, incurs no penalty, and the receipt is good; but if on a stamp of a lower value, or on unstamped paper, then a receipt is no discharge, and incurs a penalty.

**RECEIVER OF STOLEN GOODS**. Receiving stolen goods, knowing them to be stolen, is an high misdemeanour at the common law; and by several statutes, is made felony and transportation; and in some particular instances, felony without benefit of clergy.

**RECOGNISANCE**. A recognisance is a bond of record, taken usually by a judge or officer of record, testifying the recognisor to owe a certain sum of money to some other.

A recognisance is a record presently, before it be made up in form.

A recognisance to keep the peace towards the king and all his people, or towards A. only, or towards A. and his servants, is good. A justice who takes recognisances by virtue of a *supplicavit*, may keep it uncertified till he receive a *certiorari*.

If a justice bind one for his life, he cannot afterwards release him. If the recognisance be general, and no time limited, it shall be intended for life. If no mention be made in the recognisance, or in the condition of it, that it is for the preservation of the peace, such recognisance seems to be void. So it is if the party be bound not to beat or maim J. S. for it ought to be to keep the peace in general; but it is good, though no time of appearance be contained in it.

A recognisance being matter of record, an indictment will not lie for breach of it, but a *scire facias*.

When you take a recognisance, it must be made in English; but the condition, the name, the place of abode, and the trade or calling, both of the principal and sureties, are to be punctually set



down, and the principal is to be bound in double the sum which the sureties are bound in.

When it is entered or made up, you read the condition to the parties bound, calling them by their names thus :

You acknowledge to owe unto our sovereign lord the king, the sum of \_\_\_\_\_ a piece, to be levied on your respective goods and chattels, lands and tenements, for the use of our sovereign lord the king, his heirs and successors, if default shall be made in the condition underwritten.

The condition, &c. Are you contented ?

The recognisances are to be engrossed on parchment, to which the justice subscribes his name ; but the persons bound need not set their names to it.

It is expedient for the justice to keep a book, in which he ought to enter his recognisance thus :

A. B. of the parish of C. in the county of D. E. to appear at the next assizes (or sessions of the peace, as the case is) to answer.

Sureties  $\left. \begin{array}{l} \text{R. N. of B.} \\ \text{B. W. of L.} \end{array} \right\} 10\%.$

Every recognisance must have these things in it ; the time of making it, the justice's name before whom the names of the persons bound, with the additions of their places of habitation, trade, &c. the sum they are bound in. It must be made to the king, and in his own name ; if for the peace, to appear at the next sessions of the peace ; if for felony, at the next gaol delivery ; and it should be in Latin, and wrote on parchment, but being on paper it is good in law.

The condition usually is, to keep the peace or good behaviour against all men, and especially T. W. till the next sessions, and then to appear, &c. this is the best form. But if against all men only, or against J. S. only, it be to keep the peace, &c. and not to appear, or say not when or before whom to appear ; or if it be to appear at another, not the next sessions, or to keep the peace, and set down no time, or for a year, or for life ; these are good.

The recognisance runs *de terris and tenementis, bonis and catallis, &c. fieri levare, &c.* and yet the king may be at his election to take the execution of the bodies of the recognisors, (as well of the principal as of the sureties) or of their lands and chattels, for the sum in the recognisance contained : and it seemeth by the common law, before the stat. of 33 H. 8. cap. 39. in all these cases where a man is debtor to the king, as well his body as his lands and goods are liable to the king's execution.

A recognisance should be *quod conservaret pacem*, but was *garderet pacem* ; and yet adjudged good.

A justice of peace, by his general authority, may deliver a recognisance into the king's bench, with his own hand.

The notes that are taken in paper, are good records.

The justice may take a recognisance of 1000*l.* for the peace, if the person be dangerous.

All recognisances taken by justices of peace must be made to the king, by the words (*Dom' Regi*) upon pain of imprisonment, and such recognisances are in nature of a statute staple.

In some cases justices of peace are enabled to take recognisances by express statutes; in other cases, it is rather by congruity, than either by their commission or statute; as where a statute gives them power to bind any man to appear at the assizes, &c. to take sureties for any matter, or but to cause a person to do any thing; in all these cases they have (in congruity) power given them to bind the party by recognisance to do it, or commit him.

In case where a justice has power to take a recognisance, if the party refuse to be bound, the justice, &c. may send him to gaol.

By 4 and 5 *W. and M.* cap. 18. every justice of peace may take recognisances from persons procuring informations in B. R. to be entered, to the person against whom such informations are to be exhibited, in the penalty of 20*l.* that he, she, or they, will effectually prosecute such informations, and abide by and observe such rules and orders as the court shall direct.

The like upon removing indictments by *certiorari*.

Justices may take recognisances out of sessions. One justice may take recognisance for the peace or good behaviour, by their commission, upon complaint made to him, or upon a *supplicavit*, delivered to them.

One justice may bind by recognisance, those who can give evidence against a felon, to appear at the assizes, &c.

A justice can take no recognisance, but only for such matters as concern his office; and if he take a recognisance where he hath no power, it is absolutely void.

These recognisances are to be certified by the justices to the next quarter sessions, except such as are to inform against felons, and upon bailment of felons, which by statutes they are to do at the next general gaol delivery.

If a recognisance for the peace be taken by a justice *ex officio*, the number and sufficiency of the sureties, the sum wherein, &c. and the time how long, is wholly left to his discretion. But if it be taken upon a *supplicavit*, &c. it must be done as the writ prescribes; yet if no sum be expressed therein, &c. the justice as to such matter, is left to his liberty.

N. B. If the sureties die, the principal is not compellable to find new ones.

The justice must certify the recognisance to the sessions, though released.

These are to be certified notwithstanding the death of the king, or the death of the cognisor, or of the party at whose suit they are taken; nay, though they are released on pain of 10*l.*

If they concern the evidence against felons, they must be certified to the next gaol delivery.

Any recognisance that may be taken by one or two justices out of the sessions, may be taken by all the justices in the sessions.

The king cannot take a recognisance, for he cannot be a judge;



but ought to have judges under him. None can take a recognisance but a judge of record, or by commission, as judges of both benches, justices of peace, and the like; conservators of the peace by the common law, could not take surety of the peace by recognisance, but by obligation; the same law of a constable.

The justices cannot award any process upon a recognisance forfeited, but they must certify the same, with the cause of forfeiture, into some of the courts at Westminster.

They may bind such as keep common alehouses, &c. or unlawful games, that they keep them no longer; and such as play at unlawful games, that they use the same no more.

May bind takers of partridges, &c. and hawkers in corn, to appear at the next sessions.

May bind those convicted for destroying pheasants, &c. that they offend not hereafter.

May bind a master abusing his apprentice, &c. to appear at the next sessions.

May bind witnesses to appear and give evidence against a felon, and prosecute, to appear and prefer his bill and give evidence.

Two justices may take recognisance of alehouse-keepers for keeping good orders.

May bind an alehouse-keeper (committed for victualling without license) that he keep an alehouse no more.

May bind prisoners to find sureties for their appearance, &c.

May bind the defendant in a suit of tithes, to obey the sentence of the judge.

May bind an offender of a penal statute to appear at the sessions.

And albeit the king, or any of the parties, should die before the sessions, yet these things are to be certified to the sessions; yet though the recognisance be not certified the party must appear.

The sum is discretionary in the justice, and when once taken, if he is deceived in the ability of the sureties, he may compel the party to put in more; but this is when the recognisance is taken *ex officio*, and not by virtue of a *supplicavit*.

If no time be set down, it shall be taken for his life that is bound.

If no time be set down when to appear, the obligor may appear at any time; but it is safe to appear the next sessions. It may be not set down before whom, he may appear before any justice of peace.

A corporation cannot enter into a recognisance.

Generally whatever is a breach of the peace, is a forfeiture of the recognisance entered into for the keeping of it. Menacing words to the person himself, at whose suit he was bound to the peace, is a breach of it; otherwise it is in the absence of such party, unless he lies in wait to put in execution his menaces. Every assault, battery, going with armour, or unusual attendance in terror of the people; commanding another to break the peace, if it be afterwards done; false imprisoning, thrusting another into the water, whereby he is in danger of drowning, rape, burglary,

robbery, murder or manslaughter, or procuring the same, treason against the king's person, assembling riotously, wounding another at backword, &c. though they play by consent; all these are forfeitures of the recognisance.

But if the parent chastise his child within age, the master his servant or apprentice, the schoolmaster his scholars, the gaoler his unruly prisoners, a person confining his mad relations, a constable, &c. striking a person that will not yield to his arrest; beating another in defence of his own person or the person of his wife, father, mother, master, child within age (not able to defend himself) or of his goods or possession, his lawful way, or ancient water-course, the executing the law, as whipping, &c. by an officer authorized; and also unlawful entering into lands, &c. (though with force) so that it be without violence to the person of any one, or terror to the people; or taking away another man's goods wrongfully or feloniously, so it be not from his person; all these are no forfeitures of the recognisance.

If a person be to appear at a certain day, his appearance must be recorded to have been on that very day.

One bound generally to the king and all his people may, upon his appearance at the sessions, be discharged by proclamation.

The conusor must appear, and his appearance be recorded, though his recognisance be not certified by the justice.

If the recognisance be removed by the *certiorari*, the conusee need not appear at the sessions, for the justices cannot call him, having nothing before them.

Neither the justice or party can release, or otherwise discharge one bound to the peace for his life.

A recognisance to keep the peace toward A. only, may be released by A. alone; so it is of a recognisance *versus cunctum populum and precipue versus A.* it seems A. may release it.

The justice ought to certify the recognisance to the sessions, though released.

The demise of the king, the death of the conusor, or of him at whose suit the peace was granted (whether the same were to be kept towards himself alone, or *versus cunctum populum and precipue versus himself*) if the recognisance be not forfeited, shall discharge it.

A man bound in a recognisance for his good behaviour, and being afterwards taken by a constable, upon a suspicion of felony, he escaped. Adjudged, that though no felony was committed, and though the constable took him wrongfully, yet his escape is misbehaviour, and by consequence his recognisance is forfeited.

But a recognisance is not forfeited for opprobrious words, for though such words may be provocations to break the peace, yet they do not immediately tend to it, as assaulting and threatening do.

Neither is it forfeited for beating in defence of his wife, child, father, mother, master, goods or possessions, nor in the defence of his way, if ancient, &c. as aforesaid.



If the recognisance is not already forfeited, it is discharged by the demise of the king, or death of the cognisor, or by a release of the party *ore tenus*, or by the justice himself, to be written under the recognisance.

If any release be made of the recognisance or *supersedeas*, so that it be discharged, the recognisance must be certified with the release, and the *supersedeas* annexed.

If a man be bound to appear at the assizes or sessions, and the recognisance be before that time removed by *certiorari* into the chancery or king's bench, this will discharge his appearance.

The justices of peace at sessions are to call the party conusor; and if he do appear, and the prosecutor appear also, and he be willing to discharge the conusor, (if it be of the peace) they do usually discharge him; but if he desire he may be continued, and show cause, they do continue him. If the prosecutor do not appear, they do usually bind him over two or three sessions.

If the condition be general against all men, and not against any person in particular, they do usually make proclamation, and then discharge them.

Although it hath been holden that the justice of peace, or the party who first demanded the peace, might release the same before the same justice of peace that took the recognisance, or before any other justice of peace: as also that he might release such surety of peace by deed under his hand and seal, so as to discharge his appearance on the recognisance.

Yet it is now holden, that neither the justice of peace nor the party can discharge the recognisance of the peace, by their release out of the sessions.

Because first the recognisance is made to the king, and therefore none but the king can release or discharge the same. Secondly, the recognisance is taken for the appearance of the party, &c. as well as for his keeping the peace, and the release of the justice, or of the party, cannot discharge the appearance of the party bound. And therefore, notwithstanding that the justice of peace out of sessions shall make or take any release of the peace, yet it shall be safe, for the party bound, to appear, to save his recognisance; and upon the certificate made by the justice of peace to the sessions of such release, the conusor shall be there discharged (at least) against the party who craved the peace; though the common usage is otherwise.

Nor can the king in any case release or pardon the surety of the peace, nor such recognisance, till it be forfeited; but being forfeited, then the king, and no other, may release and pardon the forfeiture.

The death of the king, and the death of the recognisor, and also the death of the party, at whose suit the peace was taken, discharge the recognisance, if it were to keep the peace against him alone.

But yet in these three former cases, such death shall not discharge the recognisance, if it were forfeited before.

The death of the sureties shall not discharge the recognisance, neither shall the party principal be compelled to find new sureties after their death; for if the peace be broken after their deaths, their executors shall be charged therewith; yet others are of opinion that the principal shall be compelled to find new sureties.

Also such surety for the peace may be discharged by a *supersedeas* made by another justice of peace of that county, or by a *supersedeas* out of the chancery or king's bench.

Whatsoever act is a breach of the peace, the doing, threatening or intending thereof, against the person of another being present, is a forfeiture of his recognisance.

N. B. If a man be bound in a recognisance for himself and his servants, if any one of them break the peace, the whole recognisance is forfeited, *et sic in similibus*.

RECORD, an act committed to writing in any of the king's courts; during the term wherein it is written, is alterable, being no record; but the term once ended, and the act duly enrolled, it is a record, and of that credit, which admits of no alteration or proof to the contrary.

RECOVERY. Common recoveries were invented by the ecclesiastics to elude the statutes of mortmain; and afterwards encouraged by the finesse of the courts at law, in order to put an end to all fettered inheritances, and bar not only all estates tail, but also all remainders and reversions expectant thereon.

A common recovery is so far like a fine, that it is a suit or action, either actual or fictitious; and in it, the lands are recovered against the tenant of the freehold; which recovery by a supposed adjudication of the right, binds all persons, and vests a free and absolute fee-simple in the recoverer. And a common recovery is now looked upon as the best assurance, except an act of parliament, that purchasers can have.

There must be three persons at least to make a common recovery, a recoveror, a recoveree, and a vouchee. The recoveree is the plaintiff or demandant that brings the writ of entry. The recoveror is the defendant or tenant of the land, against whom the writ is brought. 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 to yield him other lands in value, according to a supposed agreement.

And this being by consent and permission of the parties, it is therefore said that a recovery is suffered.

A common recovery 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 upon a fine; 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.

By 14 G. 2. c. 20. common recoveries shall be valid without surrender of freehold leases; the next in remainder for life joining. The deed making a tenant to the writ of entry, shall be sufficient evidence of a recovery for purchasers, after twenty years' posses-



sion; and common recoveries after twenty years shall be deemed good, if it appear thereon that there was a tenant to the writ, though no deed for making such tenant appear. A recovery shall be deemed good, though the deed for making the tenant be executed after the time of the judgment, so that it be executed before the end of the term.

REGISTER of a parish church is that, wherein the marriages, baptisms, and funerals of each parish are annually registered, and subscribed by the ministers thereof.

By the 52 *G. 3. c. 146.* for the better regulating and preserving parish and other registers of births, baptisms, marriages and burials, in England, it is enacted that from the 31st day of December, 1812, registers of public and private baptisms, marriages, and burials, solemnized according to the rites of the united church of England and Ireland, within all parishes or chapelries in England, whether subject to the ordinary or peculiar, or other jurisdiction, shall be made and kept by the rector, vicar, curate, or officiating minister of every parish, or of any chapelry where the ceremonies of baptism, &c. have been usually and may, according to law, be performed, for the time being, in books of parchment, or of good and durable paper, to be provided by his majesty's printer as occasion may require, at the expense of the respective parishes or chapelries; whereon shall be printed, upon each side of every leaf, the heads of information herein required to be entered in the registers of baptisms, marriages, and burials respectively, and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by number one; and every such entry shall be divided from the entry next following by a printed line according to the forms contained in the schedules annexed to this act; and every page of every such book shall be numbered with progressive numbers, the first page being marked with the number 1, in the middle of the upper part of such page, and every subsequent page being marked in like manner with progressive numbers, from number 1, to the end of the book.

King's printer is required to transmit the act and forms of the register to the minister.

Such registers shall be kept in such separate books aforesaid, and every rector, vicar, curate, or officiating minister, shall as soon as possible after the solemnization of every baptism, whether private or public, or burial respectively, record and enter in a fair and legible handwriting, in the proper register book, the several particulars described in the several schedules herein-before mentioned, and sign the same; and in no case, unless prevented by sickness, or other unavoidable impediment, later than within seven days after the ceremony of any such baptism or burial shall have taken place.

Certificate of baptism or burial when performed in any other place than the parish church, &c. to be according to schedule (D.) annexed to the act.

The several register books are to remain in custody of the rector, &c. and copies of such registers are to be verified agreeably to the form annexed to the act, and the officiating minister's signature thereto attested by the churchwardens.

Copies of register books are to be transmitted to the registrars of each diocese; and the registrar is to make reports to bishops whether the returns have been sent to them.

In case of neglect to verify copies of the register books, the churchwardens are to certify the default.

In extra parochial places, memorandum may be delivered of every baptism or burial, to the minister of some adjoining parish; such memorandum of baptism being duly signed by the parent of the child baptized, or a memorandum of such burial by the person employed about the same, together with two of the persons attending the same, according as the nature of the case may respectively require; and every such memorandum respectively shall contain all such particulars as are herein-before required; and every such memorandum delivered to the rector, vicar, or curate of any such adjoining parish or chapelry, shall be entered in the register of his parish, and form a part thereof.

The superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post to the several offices of the said registrars as aforesaid, shall be indorsed and signed by the churchwardens or chapelwardens of every respective parish and chapelry in England, in the form contained in schedule (E.) annexed to the act; and all such letters and packets shall be delivered at the offices of the said registrars without postage or other charge being paid or payable for the same.

Register books and memorandums, when transmitted to registrars, to be safely kept from damage.

And whereas in many dioceses the places wherein the copies of the parochial registers of baptisms, marriages, and burials, as well as the original wills proved within the same, respectively are kept, are insufficient for their being preserved with due care, for which a remedy should be applied in those dioceses where it shall be found necessary, it is further enacted, that in order to a due examination thereof, the bishop, together with the custodes rotulorum of the several counties within each diocese, and the chancellor thereof, shall before February 1, 1813, cause a careful survey to be made of the several places in which the parochial registers, and the wills proved within the diocese, are kept; and shall make a report to the privy council of the state of the same on or before the 1st day of March following, setting forth, in each case, whether the buildings are in all respects fit and proper for the preservation of papers of the above description, as well with respect to space as to security from fire, and to protection from damp; and if not, at what probable expense they can be made so; and where the instruments and papers before mentioned are kept in dwelling-houses, or other places, which cannot be made fit and secure for the due preserva-



tion thereof, then, and in such case, the persons before named shall inquire, and report in like manner, at what expense proper buildings may be provided, and in what places, so as to have one place within each diocese for the due preservation of all such registers and wills, together with their opinion upon the most suitable mode of remunerating the officers employed in each registry for their additional trouble and expense in carrying the provisions of this act into execution.

Persons making false entries, or false copies of such entries, shall be adjudged guilty of felony, and be transported for fourteen years.

But this regulation is not to affect accidental errors, if duly and timely corrected according to the truth and justice of the case.

Fees heretofore payable for copies of such registrations are not to be diminished by this act: and copies of register are not subject to stamp duty.

One half of the amount of all fines or penalties levied in pursuance of this act shall go to the person who shall inform or sue for the same; and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve; and the remainder of such fines as shall be imposed on any rector, vicar, minister, or curate, or registrar, shall be paid and applied to such charitable purposes, in the county within which the parish or place shall be, as shall be appointed and directed by the bishop of the diocese.

List of all registers to be transmitted to the registrar of the diocese.

The provisions of this act extend to cathedral and collegiate churches, the chapels of colleges or hospitals, and the burial grounds belonging thereto; and in all such cases, the books directed to be provided shall be provided at the expense of the body having right to appoint the officiating minister in every such cathedral or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college, or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens: provided that nothing in this act contained shall extend to repeal any provision contained in the 26 *Geo. 2. c. 33.* for better preventing clandestine marriages.

REGISTRY OF DEEDS, is regulated by the statutes 2 *Anne, c. 4. 18.* and 35. and 8 *Geo. 2. c. 6.* for the east, west, and north ridings of Yorkshire, and by the 7 *Anne, c. 20.* and 25 *Geo. 2. c. 4.* for the county of Middlesex. The registering of deeds is by no means general, and its expediency much questioned. For though it promises security of title to purchasers of lands and mortgagees,

yet it has been doubted whether more disputes have not arisen in those counties, by the omission and inattentions of parties, than have been prevented by the use of registers.

REGRATING. See FORESTALLING.

RELEASE. Releases are distinguished into express releases in deed, and those arising by operation of law; and are made of lands and tenements, goods and chattels; or of actions real, personal, and mixed.

By a release of all demands, all actions real, personal, and mixed, and all actions of appeal, are extinct.

REMAINDER, is an estate limited in lands, tenements, or rents, to be enjoyed after the expiration of another particular estate.

An estate in remainder, is an estate limited to take effect and be enjoyed after another estate is determined. As if a man seised in fee-simple grant lands to one for twenty years, and after the determination of the said term, then to another, and his heirs for ever, here the former is tenant for years, remainder to the latter in fee. In the first place, an estate for years is created or carved out of the fee, and given to the former, and the residue and remainder of it is given to the latter. Both their interests are in fact only one estate; the present term of years, and the remainder afterwards, when added together, being equal only to one estate in fee.

The word remainder is no term of art, nor is it necessary to create a remainder. So that any words sufficient to show the intent of the party will create a remainder; because such estates take their denomination of remainder more from the nature and manner of their existence after they are limited, than from any previous quality inherent in the word remainder.

RENT, is a certain profit issuing yearly out of lands and tenement corporeal.

There are at common law three kinds of rents; rent service, rent charge, and rent seck, or rack rent.

1. *Rent service*, is where the tenant holds his land of his lord by fealty and certain rent; or by homage, fealty, and certain rent; or by other service and certain rent: and it is called a rent service, because it hath some corporeal service incident to it, which at least is fealty.

2. *Rent charge*, is so called because the land for payment thereof is charged with a distress.

3. *Rent seck, or rack rent*, is where the land is granted without any clause of distress for the same.

The time for payment of rent, and consequently for a demand, is such a convenient time before the sun setting of the last day as will be sufficient to have the money counted; but if the tenant meet the lessor on the land at any time of the last day of payment, and tender the rent, that is sufficient tender, because the money is to be paid indefinitely on that day, and therefore a tender on that day is sufficient.

REPLEVIN, is the writ called *replegiare facias* by him who



has cattle or other goods distrained by another, for any cause, and putting in surety to the sheriff, that upon delivery of the thing distrained, he will prosecute the action against the distrainer.

In this writ or action, both the plaintiff and defendant are called actors; the one, that is the plaintiff, suing for damages, and the avowant or defendant to have a return of the goods or cattle.

That the avowant is in the nature of a plaintiff, appears, 1st, from his being called an actor, which is a term in the civil law, and signifies plaintiff; 2dly, from his being entitled to have judgment *de retorno habendo*, and damages as plaintiffs; 3dly, from this, that the plaintiff might plead in abatement of the avowry, and consequently such avowry must be in nature of an action.

Replevins by writ issue properly out of chancery, returnable into the courts of K. B. and C. B. at Westminster.

In order to obtain a replevin, application must be made to the sheriff, or one of his deputies, and security given that the party replevying will pursue his action against the distrainer; for which purpose, by the ancient law, he is required to put in pledges to prosecute; and that if the right be determined against him, he will return the distress again; for which purpose he is to find pledges to make return. These pledges are discretionary, and at the peril of the sheriff.

After the goods are delivered back to the party replevying, he is then bound to bring his action of replevin against the distrainer; which may be prosecuted in the county court, be the distress of what value it may; but either party may remove it to the superior courts of king's bench or common pleas, the plaintiff at pleasure, and the defendant upon reasonable cause.

If the sheriff be shown a stranger's goods, and he takes them, an action of trespass lies against him, for otherwise he could have no remedy; for being a stranger, he cannot have the writ *de proprietate probanda*; and were he not entitled to this remedy, it would be in the power of the sheriff to strip a man's house of all his goods.

If it be determined for the plaintiff, namely, that the distress was wrongfully taken, he hath already got his goods back into his own possession, and shall keep them, and moreover recover damages. But if the defendant prevail, by the default or nonsuit of the plaintiff, then he shall have a writ *de retorno habendo*, whereby the goods or chattels which were distrained, and then replevied, are returned again into his custody, to be sold, or otherwise disposed of, as if no replevin had been made. If the distress were for damage feasant, the distrainer may keep the goods so returned, until tender shall be made of sufficient amends.

On a *retorno habendo* awarded, the party desiring to have the cattle or goods restored, must show them to the sheriff; for otherwise the sheriff may not know them.

REPRIEVE, to suspend a prisoner from the execution and proceeding of the law at that time. Every judge who hath power to order any execution hath power to reprieve.

**RESCOUS.** This is the taking away or procuring the escape of a prisoner who is imprisoned by lawful authority. And if the prisoner be detained for felony, then it is felony in the rescuer.

Rescous of a felon, before arrest, is no felony, otherwise after arrest.

Rescuing a prisoner going to the gallows is felony.

If a stranger take one out of prison with the prisoner's assent, if he be in for felony, it is felony, by the common law, in the rescuer, and he is a principal by the statute *de frangentibus prisonam*.

One is in the stocks for suspicion of felony, and is let out by a stranger, it is felony, although the party who escaped is not indicted.

If the person rescued hath committed felony, and was arrested for it, then rescuing him is felony; but if he was not arrested, then the opposing or hindering any person to apprehend him is a misdemeanor, but not felony.

But the rescuer shall not be arraigned of the felony till the principal is attainted; and if the principal die before attainder, the felony is discharged; but the rescuer shall be indicted, fined, and committed, for rescuing him.

Indictment for a rescous was *quod arrestavit*, without saying *et in custodia sua habuit*; and for this reason it was quashed, though in the same indictment it was alledged that the defendant rescued him out of the possession of the bailiff.

Rescuer of a prisoner, taken in a pretended privileged place, forfeits to the plaintiff 500*l.* and if not paid within a month after recovery, then to be transported for seven years; and if he return within that time, it is felony without benefit of clergy.

**RESTITUTION OF STOLEN GOODS.** The owner of goods stolen could not have restitution upon an indictment against the felon, though he was freshly pursued, at the common law, because the prosecution was at the suit of the king, though he might upon an appeal, because that was at his own suit.

But by the stat. of 21 *H. 8. cap. 11.* this was remedied; for now if the felon be found guilty, or attainted, at the prosecution of the party robbed, or owner of the goods, or by his procurement, the justices have power to award restitution of the goods stolen.

The same law is, if the felon be outlawed upon an indictment by means of the party robbed, &c. then the justices before whom such felony shall be found have power to award restitution.

The executors of the party robbed, &c. are within this law, if, by the evidence they shall give, or procure to be given, the felon be attainted.

A man shall have restitution of money stolen, though it cannot be exactly known.

A man killing a thief in his own defence shall not forfeit his goods.

A man stole cattle, and sold them at C. in open market, and pre-



sently after he was apprehended by the sheriffs of C. and they seized the money, and afterwards he was arraigned and hanged at the prosecution of the owner of the cattle. Agreed by the court that the owner shall have restitution of the money. For though the statute gives power to the justice to award restitution, &c. of the goods stolen, and though the money in this case was not stolen, yet because it did arise by stealing, it shall be within the equity, though not in the very words of the statute; and it hath been held to extend to executors or administrators of the party, though they are not mentioned in the statute.

Formerly, in some cases, there could be no restitution; as where the felon had sold the goods in market-overt, though he was afterwards convicted, yet the property was altered by the sale; or if he had waved them, and escaped, and it was not known who he was, the lord having seized, the owner could not have restitution, because the felon could not be indicted or attainted.

But the practice hath been otherwise since 4 and 5 *Car. 1.* for if the criminal is convicted at the prosecution of the party who lost the goods, he shall have restitution, though they were sold in market-overt; and if the party who bought them pleads it to a writ of restitution brought, the other, upon a demurrer to such plea, will have judgment.

This resolution tends to the advancement of justice, to make men vigilant in prosecuting offenders, and it will discourage persons from buying goods for a small value in a market, of such whom they have reason to suspect.

*Vide Kelynge's Rep.* 35, 48, and 50, where restitution of stolen goods shall be awarded to the prosecutor, notwithstanding a sale in market-overt.

If a thief rob or steal goods from three men severally, and he be indicted for the robbing or stealing from one of them, and arraigned thereupon, in this case, though the other two would give evidence against the offender, yet shall not they have restitution of their goods by the meaning of that statute; for the felon is not attainted of any other felony, saving of that whereof he was indicted.

But if he be indicted of all the three robberies or felonies severally, and arraigned upon one of them, and found guilty by the evidence given by one of the parties robbed, &c. yet shall he be after arraigned upon the other two indictments, to the intent he also may be found guilty by the evidence of the other two persons robbed, that so they may have restitution of their goods stolen, according to the meaning of the said statute.

And if a man steal goods at divers times from several men, and is after attainted at the suit of one of them only, for the goods stolen from him, but is not attainted at the suit of the other, by this attainer the felon shall forfeit to the king not only his own goods, but also the goods stolen from those others, at whose suit he was not attainted, though the felon had no property, but only a possession of those goods; and the property of the goods, which remaineth

in the right owner in this case, is forfeited by the owner to the king, for default of the owner pursuing the felon.

Also if there be divers thieves, and but one of them attainted, yet the party robbed shall have restitution.

If any goods, of what nature soever they be, be stolen, purloined, &c. and be sold, exchanged, or pawned to any broker, &c. in London, Westminster, Southwark, or within two miles of London, the same shall alter no property. And if a broker, having received goods, shall not, upon request of the owner, truly discover them, he shall forfeit double the value thereof to the owner, by stat. 1 Jac. 1. cap. 21. So that by this statute, if any stolen goods be bought by them, the party may have his action against them for the goods, whether he prosecute the felon or no, for the property remains to the owner notwithstanding such sale.

If a man hath goods stolen from him, and knoweth not by whom, if the felon waiveth the goods, and the king's officer, or lord of the manor, seize them, the party robbed shall have no restitution, for that he cannot indict and attain the felon. And yet if the felon hath not the goods in his possession at the time when he fled, but had formerly left them elsewhere, viz. in his own house, or in the house or custody of any other, or had hid them, then they are no waived goods, nor forfeited, but the owner may take them again wheresoever he findeth them, without any restitution awarded.

RESIDENCE, signifies a man's abode or continuance in a place.

Residence, is particularly used for the continuance of a parson or vicar on his benefice.

By the 43 Geo. 3. c. 84. (and 109) the penalties for non-residence under the 21 Hen. 8. c. 13. are repealed, and incumbents are permitted to absent themselves three months without being subject to any penalty. If they are absent between three and six months, they forfeit one-third of the annual value of the benefice after all deductions, except the curate's stipend; between six and eight, one half; between eight and twelve, two-thirds; and the whole year, three-fourths, to any one who will sue. Sinecure rectories are excepted. All who were exempted by the statute 21 Hen. 8. c. 13. are still exempt, and this statute extends the exemption to several others specified in the statute, and to public officers in either university, and to tutors and public officers in any college. But by this statute, students residing in the universities *bona fide* for study, are exempted till they are thirty years of age only.

But by this statute the bishop may, at his discretion, grant a license for non-residence, on account of the illness or infirmity of the incumbent, his wife, or child, and where there is not a fit house of residence, if the unfitness is not occasioned by the incumbent's neglect; if he lives in his own or any relation's house within the parish; if he serves another church as curate or preacher; and if he is a master or usher of an endowed school, and licensed by the bishop; these and some others are grounds for the grant of a license; and if the bishop refuses, the incumbent may appeal to the



archbishop. The bishop may grant licenses for causes not enumerated in the statute; but they must have afterwards the allowance of the archbishop. Licenses may be revoked, but if not revoked, are in force for two years. No archbishop or bishop shall be liable to the penalties for non-residence.

REVENUE, ROYAL, is that which the British constitution hath vested in the royal person, in order to support his dignity and maintain his power; being a portion which each subject contributes of his property, in order to secure the remainder.

The royal revenue, consequently, is derived from the various taxes which have from time to time been imposed by the legislature. By the 52 *Geo. 3. c. 143.* all persons convicted of resisting the operation of the revenue laws (which resistance would, by any of those laws, subject the offenders to the penalty of death, as felons without benefit of clergy) shall be deemed felons within benefit of clergy, and punishable accordingly, unless such offence be declared by the 52 *Geo. 3. c. 143.* to be felony without benefit of clergy. If, however, any person be convicted of assisting with arms in the exporting wool, or any other goods, or opposing the revenue laws with such arms, he shall be guilty of felony without benefit of clergy, and shall suffer death accordingly.

And if any person be charged by information on oath before any justice, or other person competent to take such information, with being guilty of assembling, aiding, or assisting, or of maliciously shooting, maiming, or wounding, in any case wherein any such officer, or any person assisting him in his duty, shall have been killed, such information shall be forthwith certified by the justice, or other person taking the same under his hand and seal, to one of his majesty's principal secretaries of state, who shall forthwith lay the same before his majesty in his privy council; and his majesty may thereupon, by order in council, require and command the person so charged with such offence, that he do, within the space of sixty days, or such longer time as to his majesty shall seem fit, after the publication of such order in the London Gazette, surrender to the lord chief justice, or any other justice of the king's bench, or to any justice of the peace, or other person competent to take such surrender as in such order shall be specified; and may further order and require such order to be proclaimed by the sheriff of the county where the offence shall have been committed, if committed within any county of the United Kingdom; and if not committed within any such county, then by the sheriff of any county near to the place wherein the offence shall have been committed; and the clerks of his majesty's privy council shall cause such order to be forthwith printed and published in the London Gazette; and such publication to be repeated once in every week after such first publication, until the expiration of the said sixty days, or such other time as shall be appointed by such order for the surrender of such offender, and shall also cause a copy of such order, attested by the signature of one of the said clerks, to be transmitted to the sheriff of the county specified in such order, who shall, within fourteen

days after the receipt of such copy, cause the same to be proclaimed, between the hours of ten in the morning and two in the afternoon, in the respective market-places, upon the respective market days of two market towns in the same county, if there shall be two such towns; and if there shall be only one such town, then in such town, and in some other place of general resort within such county, and shall also cause a true copy of such copy of such order to be affixed upon some public place in each of such market towns, or other place where such proclamation shall be made; and if the person charged with such offence as aforesaid shall surrender himself according to such order, the justice, or other person to whom he shall so surrender, shall commit him to some gaol or prison within the limits of his jurisdiction, to be there dealt with according to law; but if such person so charged and proclaimed as aforesaid shall not so surrender within the time limited in such order, or shall after surrender, and before trial for such offence, escape from justice, such person shall, from the day appointed for such surrender, be adjudged to be a person attainted of felony, and shall suffer death as a felon, without benefit of clergy, if the offence shall be charged to have been committed in England, or within the limits of any port, harbour, or creek, in England or Ireland, or within one hundred leagues of the coast thereof; and it shall be lawful for the court of king's bench, or the justices of oyer or general gaol delivery, or great sessions for the county or place where such offender shall be, to award execution against such offender, in such manner as if he had been convicted and attainted in the said court of king's bench, or before such justices of oyer and terminer, or general gaol delivery, or great sessions respectively; and if the offence shall be charged to have been committed in Scotland, or within any port or harbour, or creek thereof, or within one hundred leagues of the coasts thereof, such offender shall in the like case be adjudged, deemed, and taken to be convicted of a capital crime, and shall suffer the pain of death, and confiscation of moveables, as in the case of a person found guilty of a capital crime, and under sentence for the same; and it shall be lawful for the court of justiciary, or the lords of justiciary in their circuits in Scotland, to award execution against such offender, in such manner as if he had been found guilty and condemned in the said courts of justiciary or circuit courts respectively.

REVERSAL OF JUDGMENT, is the making it void for error, and when, on the return of a writ of error, it appears that the judgment is erroneous, then the court will give judgment, *quod judicium revocetur, ad nullum, et penitus pro nullo habeatur.*

REVERSION, hath a double acceptation in law; the one is, but an interest in the land when the possession shall fall; the other, when the possession and estate, which was parted with for a time, ceases, and is determined in the person of the alienees, assignees, grantees, or their heirs, or effectually returns to the donor, his heirs, or assigns, whence it was derived. The difference between a reversion and remainder is, that a remainder is general, and may be



to any man but to him that grants or conveys the land, &c. for term of life only or otherwise. A reversion is to himself from whom the conveyance of the land, &c. proceeded, and is commonly perpetual as to his heirs also.

**REVILING OF THE CHURCH.** The 1 *Edw. 6. c. 1.* and 1 *Eliz. c. 1.* enacts, that whoever reviles the sacrament of the Lord's supper shall be punished by fine and imprisonment. And by the second section of the latter statute, if any minister shall speak any thing in derogation of the book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the first offence, and for life for the second; and if he be beneficed, he shall, for the first offence, be imprisoned six months, and forfeit a year's value of his benefice; for the second offence he shall be deprived, and suffer one year's imprisonment; and for the third shall in like manner be deprived, and suffer imprisonment for life. And if any person whatsoever shall, in plays, songs, or other open words, speak any thing in derogation, depraving, or despising of the said book, or shall forcibly prevent the reading of it, or cause any other service to be used in its stead, he shall forfeit for the first offence an hundred marks; for the second, four hundred; and for the third, all his goods and chattels, and suffer imprisonment for life.

**RIGHT,** in general signification, includes not only a right for which a writ of right lies, but also any claim or title, either by virtue of a condition, mortgage, or the like, for which no action is given by law, but only on entry.

**RIOT, ROUT, AND UNLAWFUL ASSEMBLY.** An unlawful assembly is, when three or more do meet to do an unlawful act against the peace, as to pull down a house, &c. or to do a lawful thing in an unlawful manner, as to distrain for rent, &c. with force and violence, but they do nothing.

A rout is, when they move forward, after they are thus met, in a turbulent way, to effect it, but they do not perform it.

A riot is, when they do not only meet and go on, but also perform it.

And to make a riot, there must first be three or more persons: secondly, their intent must be to do an unlawful act, or a lawful act with violence, &c.

But this offence may be committed, though some of the company stand by, and do nothing; for if they stand by and countenance it, it is as bad as if they did; but if they come by chance, and intend nothing, *contra*.

For as a man may do an unlawful thing, so as it may not be a riot, so he may do a lawful thing, so as to make a riot.

The chief statutes which relate to riots are, 2 *Edw. 3. cap. 3.* 13 *H. 4. cap. 7.* 2 *H. 5. cap. 7.* and 8. 19 *H. 7. cap. 13.* and 21 *Jac. 1. cap. 15.* 1 *Geo. 1. cap. 6.*

Two were found guilty, and the rest acquitted, but the verdict was set aside, because two could not be guilty of a riot, and by consequence all are acquitted.

A town in Devonshire was indicted for suffering idle persons to

meet and hold assizes in mockery of a court of justice. So where one Gladman took upon him to be a mock king, and went to the priory of Norwich, with a crown of paper on his head, with a riotous assembly, the liberty was seized.

Several were indicted for a riot in rescuing a person from an arrest near Charing Cross, and were fined 500*l.* the chief of them being a cobbler, with a sword in his hand, and a kettle on his head, and so he stood in the pillory, and the rest likewise.

Information against the defendants, for that they *vi et armis clamoribus et vociferationibus illicite, riotose et routose*, did hinder the bailiffs and burgesses of B. who were assembled on such a day, &c. to choose a bailiff for the said borough, &c. to proceed to the election, &c. The defendants were found guilty, but the verdict was set aside, because the information did not set forth that the defendants were unlawfully assembled, nor that the bailiffs and burgesses had any right to assemble to choose a bailiff. For to make a riot, there must be an unlawful assembling of more than two persons; and not only so, but there must be an unlawful act done by them; and by this information it did not appear but that the bailiffs and burgesses might meet to do an unlawful act themselves, and then it is not unlawful to disturb them.

Where people are lawfully assembled, an affray happening will not be a riot.

In case of a riot, 1st, The justices of peace may proceed upon the statute of Northampton; or, 2dly, The party grieved may have a commission out of the chancery to inquire of it, and of the neglect of the justices of peace in punishing it; or, 3dly, He may have a writ out of the chancery to inquire of it, and of the neglect of the justices of peace in punishing it; or, 4thly, He may have a writ out of chancery to command the justices of peace to execute the stat. 13 *H.* 4. *cap.* 7. But the ordinary remedy is by address to the justices of peace, every one of which must do his best to prevent and stay them in doing it; for one justice of the peace alone may do somewhat to prevent a riot before it be done, and for the stay of it whilst it is in doing, though he can do but little when the riot is done and over.

And therefore, upon the first notice of it, he ought to go to the place, if he can conveniently, and he may take with him (especially if it be great) the *posse comitatus*, and suppress it: 2dly, If he find any of the rioters, to take and imprison them, and bind them to the good behaviour: 3dly, If he cannot go, or stay when he is there himself, he may command his servants to go or stay, and suppress it, and bring the rioters before him, to find sureties for the good behaviour: 4thly, The riot being done, the justice of peace can neither record it, make inquiry, set a fine, award process, or meddle with it but as a trespass, or upon the statute of Northampton, if it be a forcible entry. And yet if a justice of peace, sitting judicially, see a riot done before his face, he may record this, and command the party to be arrested; but if it be in another place, the party may traverse it: 5thly, Every justice of



peace is to see the statute of 13 H. 4. cap. 7. executed; for though the two next justices only are in danger of the fine of 100*l.* yet all the rest may be punished. And in the execution of the statute he is to do in this wise: 1. Get the assistance of the sheriff; or any other justice of peace, if he can. 2. Go to the place, if he can. 3. If he find any rioters or unlawful assembly, commit them to gaol. 4. Compel them to give sureties of the peace for good behaviour. 5. Upon refusal, to commit them. 6. Take away their weapons. And further he cannot go till inquiry, which must be made by two justices of peace. And any two justices of peace may do this, and they must proceed upon the statute of 13 H. 4. cap. 7.

My Lord Hale, in his *Historia Placitorum Coronæ*, vol. I. fol. 496, observes, that the statute 17 R. 2. cap. 8. which gives power to the king's ministers in general to imprison rioters, is not repealed by 13 H. 4. cap. 7. which gives the same power unto sheriffs and justices of the peace.

And by it they are to send for the sheriff, or his under sheriff, for it cannot be done without one of them, if the riot doth continue; for in this case he is one of the judges. And if they both come not, he that does come is excused; but the inquiry after, when it is past, may be by two justices of peace without the sheriff, save only as a minister. And if any justices of peace do it, the two next are excused of the 100*l.* 2. They must likewise, as when one justice doth it, go to the place. 3. Take, if need be, the *posse comitatus*. 4. Arrest the offenders, remove the force, commit the rioters, and take away their weapons; and so they may do to all that are with them, and all that they meet coming from them in a riotous manner; and, if they resist, beat, wound, or kill them, but may not record a riot done by them. 5. If the rioters are escaped, they cannot arrest them, or award process to arrest them at another time or place, but the record must be sent into the K. B. there to be proceeded upon, but no traverse lieth to this; yet they may send their warrant to bind them to their good behaviour. 6. After arrest, the justice and sheriff must formally, in the nature of an inquisition, record the riot in writing, as the case is; for if they commit, and do not record, they lose 100*l.* And they must take care they do the party no wrong, for he cannot traverse it, but is remediless. 7. If another riot be made upon or before them, they are to record that also. 8. They are then to send them to gaol, which the sheriff is to execute with the *posse comitatus*; and if they record, and do not send to gaol, they lose 100*l.* The same justices, and none other, are to fine them; which fine must be of good value, that the charges may be born by it. And this fine they may either estreat into the exchequer, or keep the offender in prison till he pay it to the justices or sheriff, by 1 H. 5. cap. 8.

And this record they may certify, if they will, to the K. B. or quarter sessions, or keep by themselves. And in all this the sheriff must join with them. But if the riot be past, the two justices must, within a month, at a private sessions, inquire, by jury, of the riot,

and being found, record it there, and end the matter, set the fine, make out process, commit till payment, or upon payment, or surety to pay, deliver the prisoner, receive and try the traverse, and dismiss the party, if they see cause. But after traverse, the usual course in this case is, to transmit the record into the king's bench or sessions, there to be tried. And if there be any undue practice, that the jury will not find it, it is to be certified by the the sheriff and two justices into B. R.

By stat. 13 H. 4. cap. 7. the sheriff or his deputy seem to have a concurrent jurisdiction with them in fining the offenders, and therefore, upon a writ of error brought, the judgment was reversed, where a fine was set by the two justices without the sheriff.

The two justices must have notice of the riot, or else they are not punishable.

Adjudged that where rioters are convicted upon view of two justices, the sheriff must be a party to the inquisition; and this is by virtue of the statute; but if they disperse themselves before conviction, the sheriff need not be a party; for in such case the two justices may make inquisition without him, for this is *pro domino rege*. But if the justices make no inquisition within a month after the riot, they are punishable; but the lapse of a month doth not determine their authority to make inquisition, it only subjects them to a penalty for not inquiring before.

Indictment against the defendants, for that they *riotose, routose, et illicite se assemblaverant et sic assemblati insultum fecerunt, &c.*

Two justices may record what is done in their view, which being a conviction, they may fine the offenders, and commit them till paid; but Mr. Dalton says, the best way is to certify the record into B. R. that they may be fined there.

If they escape being taken by the justices, this record being certified as aforesaid, process shall issue against them out of B. R.

The record must be certain as to the time, place, number, weapons, manner, and other circumstances, because it is a judgment, and not traversable; for if upon examination it appears to be no riot, or that the justices did not see it, yet the parties are concluded. But for committing without recording, or making a record without committing, the justices forfeit 100*l.*

Information against two justices for not inquiring into a riot, and found against one of them, is good.

After a riot is committed, (if not within the view of the justices,) and the rioters are gone, the two justices, within a month, may make a precept to the sheriff to summon a jury to inquire of it; and if it is found that they may commit the offenders, and certify the inquisition into B. R. that they may be fined, which should not be less than 10*l.* for the principal.

The inquiry within the month must be intended of great riots; for, by virtue of their commission, the justices may inquire into small riots at any time afterwards; so that the limitation of a month seems to prevent the forfeiture of 100*l.* by the two next justices in



cases of great and notorious riots, they neglecting to make inquiry within that time.

But if they inquire afterwards, the indictment shall not be quashed for that reason, because a riot is an offence at common law, and the statute is not penal, but only directory to the punishment.

After the riot is found upon this inquisition, the justices may award a *venire facias*, directed to the sheriff of the county, under their own *teste*, commanding him to cause the offenders to appear before them.

This is only where the offenders cannot be taken; and so if the sheriff return *non est inventus*, you may proceed to the outlawry.

But if they appear, the justices may fine them, and commit till paid, or may take sureties by recognisance to pay the fine, or may accept a traverse, which inquisition and traverse must be sent to the next sessions, or into B. R. there to be tried.

An indictment for a riot must show what the unlawful act was that they assembled to do.

The charges of the justices and jury are to be paid by the sheriff out of these fines; and therefore, by the statute of 2 H. 5. cap. 8. the fines may be increased; and an indenture being made between the justices and the sheriff, he is to be allowed it in passing his account in the exehequer.

If the truth of the riot cannot be found by this inquisition, then within a month afterwards the same justices and sheriff must certify into B. R. so much of the fact as appears to them, together with the names of the principal offenders, and the circumstances and impediments why the truth was not found, under the penalty of 20*l.*

This certificate may be in English, by way of a letter, comprehending the whole truth, with the time, place, &c. and if any material thing be left out of the inquisition, it may be supplied in the certificate.

But if the sheriff die, or the justices are put out of commission before the certificate is made, it cannot be done afterwards.

*N. B.* If divers persons be lawfully assembled, and fall out of a sudden among themselves, this is no riot, only an affray.

By statute 2 H. 5. cap. 8. persons guilty of heinous riots shall suffer one year's imprisonment, without bail.

A record of a riot upon view by two justices of the peace, returned into B. R. is sufficient to convict the rioters, whereupon they shall be fined.

Riots, &c. shall be suppressed and inquired of at the king's charge, which the sheriff is to disburse by indenture between the justices and him, by stat. 2 H. 5. cap. 8.

In default of the two next justices not executing the stat. 13 H. 4. cap. 7. respectively as to them is appointed, the other justices of and within the county (upon notice of such riot) ought to do

execution thereof, every one, upon danger to be fined; but the penalty of 100*l.* is only to be laid upon the two next justices.

But no justice of peace who dwelleth in another county is bound upon the said penalty of 100*l.* to execute the said statute of 13 *H.* 4. *cap.* 7. although he dwelleth next to the place where the riot is; and although he be in commission of the peace for the county where the riot is.

If any two justices of peace shall see any making a riot, they may command others to arrest the rioters, and then make their record thereof, and the offenders shall be concluded thereby.

But if the justices of peace do not themselves see the riot, they cannot make a record thereof, but then they must inquire thereof.

And if the justices of peace shall record a riot, and upon examination of the matter after, it shall appear to be no riot, or that they saw it not, or that there was no riot at all, yet the parties shall be concluded thereby, and have no remedy; and therefore the justices shall do well to be advised what they record.

And for that this record of the justices and sheriff is a sufficient conviction in itself against the offenders, therefore it ought to be formal and certain, as well for the time and place, as also for the number, weapons, manner, and other circumstances; because the parties are concluded thereby, and shall not be received to traverse or deny it in any point.

This record ought to remain with one of the said justices of peace, and shall not be left among the records of the sessions of the peace, it being made out of the sessions, and not appointed to be certified thither.

And the said justices of peace (and no other) shall assess the fines upon the said offenders.

And such fines must be reasonable and just, and not unreasonable and excessive.

Note also, that the fine assessed in this, and such like cases, must not be imposed upon all the offenders jointly, but must be assessed upon every offender severally.

It is not necessary that one of the justices of peace which shall make inquiry of a riot be of the quorum.

Although the words of the statute are, the same justices (ss. which came to see the riot) shall inquire; yet if any other two justices of peace of that county shall do it, that will suffice.

Also the justices of peace, although they go not to see the riot, yet they may inquire thereof within the month after.

*N. B.* That all indictments, inquisitions, or presentments, taken and found before justices of peace, of any riot, forcible entry, and other thing against the peace, may be delivered into the king's bench by the hands of the same justices of peace before whom the same was found, or otherwise may be removed from the said justices of peace before the justices of the king's bench, by a *certiorari*; in both which cases the justices of the king's bench may proceed to hear and determine the same.

*N. B.* For riots in cities and corporations, which are armed with



power of government within themselves, the franchises may be seized, or the corporation fined; as it happened in the case of the riot where Dr. Lamb was murdered, the city of London was fined 1000 marks.

Information against two justices for not inquiring of a riot, found against either of them, good.

A fine upon rioters cannot be less than ten pounds for the principal, and four marks a piece for the rest.

The month, within the stat. 13 H. 4. cap. 7. is not to be confined to twenty-eight days, but to the almanack month.

But the justices should send such indictment or inquisition to the next quarter sessions, or into the K. B. together with the said traverse, there to be tried.

Indictment of a riot is not good unless it say *contra formam stat. inde editi et provisi.*

ROBBERY, is properly the felonious taking any thing from the person of another, or in his presence, against his will, by assault in the highway, or elsewhere, and putting him in fear thereby; and here, although the thing taken be but of the value of an half-penny, yet it is felony without benefit of clergy.

But if a felon take money from me in the highway, and do not put me in fear, or assault me, it is not robbery. Forty shillings so taken, clergy allowed.

If a thief take nothing from my person, but assaulteth me, whereby he getteth any thing from me, it is robbery; as if I cast my purse on the ground, and he taketh it away, &c.

But one finding a purse in the highway, denies it, this is not felony.

To make it robbery, the person must be put in fear.

To assault one, to rob him, without taking any thing, is not robbery.

So the bidding of one to stand and yield his money is no robbery; for there was but an intent, and no act done in pursuance of it.

One, with his sword drawn, bids me deliver my purse, and after prays me to give him a penny, and I do so accordingly, this seemeth to be robbery; for the fear he put me in was the cause thereof. So if I, flying from a thief, cast my purse into a bush, and he takes it up, this is robbery; for the fear, &c. was the cause of throwing it there.

If a thief bids me deliver my purse, which I do, and he, finding but 2s. in it, gives it me back again, this is robbery, though no force be used.

A thief compels me to swear that I will bring him a sum of money to such a place at another time, or else he will kill me, and I bring the money, &c. this is robbery; or if the wife receives it, this is a taking.

*N. B.* In case of suing the hundred on a robbery, a man is allowed to be a witness in his own cause, *propter necessitatem rei.*

Cutting of a purse, picking of a pocket secretly and privily, is no robbery.

By stat. 6 *Geo. 1. cap. 23.* the streets of London and Westminster, and of other cities, towns, and places, shall be deemed highways: and all certificates hereafter to be signed for convictions for robberies shall be signed and paid without any deduction of fee, excepting 5s. for writing and drawing the same, as well where the offender pleads guilty, as where he is convicted on evidence; the person taking any other fee or reward forfeits 40*l.* to be recovered by action of debt, &c. in the courts at Westminster, to the use of the person entitled to such certificate.

Where a servant is robbed, he must be sworn as to the robbery; and two servants, each having money of their master's in their possession, were robbed; one took the oath, according to the statute, of the robbery: this is not sufficient to entitle the master to an action for the money in the possession of the other servant.

A person coming to inhabit in the hundred after the robbery committed, and before judgment, is assessable, because the county is chargeable at the time of the assessment, and not the persons which were there at the time of the robbery committed.

But a person coming to inhabit after the robbery, and judgment given, is not chargeable to be taken in execution; and so was the opinion of the court in one Dean's case.

Where a man is seized in one hundred, and carried into another hundred by daylight, and afterwards robbed in the night there, the party robbed is without any remedy.

Persons neglecting to make hue and cry, or who do not pursue it, may be fined and imprisoned.

Robbing a house, or any outhouse, as a barn or stable, in the day, to the value of five shillings, any person being or not being therein.

Robbing a house by day or by night, any person being therein, and thereby put in fear.

Robbing any person in any part of his dwelling-house, the owner or dweller, wife, children, or servants, being in any part thereof, sleeping or waking.

Breaking a house in the day-time, and stealing to the value of five shillings, any person being or not being therein.

Robbing any booth or tent in fair or market, the owner, his wife, children, or servants being in the same, sleeping or waking. All these are ousted of clergy.

One B. and another came in the night-time to a tavern in London to drink, and after they had drank, B. stole a cup in which they had drank in the chamber of the said house, the owner of the house and cup, his wife, and servants, being in the house: agreed at the sessions at the Old Bailey that this was not burglary, but robbery, without benefit of clergy, within stat. 5 and 6 *Edw. 6. cap. 9.*

A man robbed another of 49s. upon the highway: ruled to be no robbery, unless it be found that the person was put in fear.



Two men came into a public house to drink, and were shown by the servant, who was confederate with them, into a room next to a chamber in which some money was locked up in a trunk, and the servant came to them, and they broke open the trunk, and took away the money. Chief justice Kelynge, Judge Twisden and Wilde, were of opinion, that this is but felony, and does not make an actual breaking of the house : but in that case, if they, being in the house, break open any chamber door, and steal goods, this is an actual breaking of the house. Or if they break open any thing which is fixed to the freehold, as a cupboard door in a wall, &c.

Robbery in a house is distinguished from that which is but mere larceny ; for larceny is only fraudulent, without any actual force ; and a robbery is done with force : so the actual breaking a house makes it burglary. For if the door of a house be open, and a thief enter in the night and steal goods ; this is only larceny and no burglary, because there was no force, which is that which distinguisheth robbery from felony.

Now the force, which will make a robbery of a house, may either be an actual breaking of the house, or an assault upon the person.

ROMAN CATHOLICS. See PAPISTS.

ROYAL ASSENT. See PARLIAMENT.

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 the court touching the cause between them.

SACRAMENT. Three justices of peace (*Quorum* l.) may out of the general sessions take information and accusation, by the oaths of two persons, against such as shall deprave or irreverently speak of the sacrament of the body and blood of our lord and Saviour Jesus Christ, against the statute, &c. and may bind the accusers and witnesses by recognisance (in five pounds a-piece) to give in evidence at the trial. The statute of 1 *Ed. 6. cap. 1.* was repealed by 1 *M. cap. 1.* but it is revived by 1 *Eliz. cap. 1.* in such manner as the same was 1 *Ed. 6. cap. 1.*

And such person being indicted at the sessions, and found guilty of depraving, despising, or contemning the blessed sacrament, by words or otherwise, shall suffer imprisonment, and make fine and ransom at the king's pleasure.

Justices of peace in sessions may hear and determine offences and contempt against that act, so as the parties offending be informed of, or presented, within three months after the offences committed.

The justices may award *capias*, *exigent*, and *capias utlegat'* into that or any other county, and three of them may bail the offender in order to his trial.

And they may award a writ to the bishop, to be present at the trial of offenders against the statute concerning the most holy sacrament of the altar : which writ must be directed to the bishop of the diocese.

Of the uniformity of common prayer and sacraments, see the statute 14 *Car. 2. cap. 4.* at large, and 15 *Car. 2. cap. 4.*

By stat. 5 *G. 1. cap. 6.* the oath and declaration required to be taken by 13 *Car. 2.* by all officers whatsoever, of cities, corporations, or boroughs, &c. stands repealed: and whereas by the same act, the offices of all persons chosen into any offices whatsoever, in cities, &c. that have not within one year next before such election, taken the sacrament of the lord's supper, according to the rights of the church of England, shall be void. By 5 *G. 1. cap. 6.* such persons shall be confirmed in such offices, &c. notwithstanding the not having taken the sacrament as aforesaid, and shall also be indemnified from all penalties whatsoever thereby incurred; nor shall any person hereafter to be chosen into any offices aforesaid, be removed by the corporation, or otherwise prosecuted for such omission, nor shall incur any disability or penalty, unless such person be so removed, or prosecution commenced within six months after being in such office; which prosecution must be carried on without wilful delay.

The time for receiving the sacrament, &c. to qualify for preferments, is enlarged from three months to six months, by 9 *G. 2.*

SACRILEGE, is church robbery, or taking things out of an holy place, as where a person steals any vessels, ornaments, or goods of the church.

SALE OF GOODS. If a man agree for the purchase of goods, he shall pay for them before he carries them away, unless some term of a credit is expressly agreed upon.

If one man say the price of this article is 100*l.* and the other says I will give you 100*l.* but does not pay immediately, it is at the option of the seller whether he shall have it or no, except a day were given for the payment.

If a man upon the sale of goods, warrant them to be good, the law annexes to this contract a tacit warranty, that if they be not so, he shall make compensation to the purchaser; such warranty, however, must be on the sale.

But if the vender knew the goods to be unsound, and hath used any art to disguise them, or if any respect, they differ from what he represents them to be to the purchaser, he will be answerable for their goodness, though no general warranty will extend to those defects that are obvious to the senses.

If two persons come to a warehouse, and one buys, and the other to procure him credit, promises the seller, *if he do not pay you, I will*; this is a collateral undertaking, and void without writing, by the statutes of frauds; but if he say, *let him have the goods, I will be your paymaster*, this is an absolute undertaking as for himself, and he shall be intended to be the real buyer, and the other to act only as his servant.

After earnest is given, the vender cannot sell the goods to another without a default in the vendee; and therefore if the vendee do not come and pay, and take the goods, the vender ought to give him



notice for that purpose ; and then if he do not come and pay, and take away the goods in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person.

An earnest only binds the bargain, and gives the party a right to demand ; but demand without payment of money is void.

**SALT.** By stat. 5 and 6 *W. 3. cap. 7.* a duty of three pence per gallon, over and above all other duties then payable, was laid on all foreign salt imported, and a duty of one penny per gallon was laid upon salt made in England : these duties at first were but temporary, but by stat. 7 and 8 *W. 3. cap. 31.* these duties were continued for ever ; and by stat. 9 and 10 *W. 3. cap. 44.* a further duty of seven pence per gallon was laid on all foreign salt imported, and a duty of three pence halfpenny per gallon on all salt made in England, for ever.

By stat. 5 and 6 *W. 3. cap. 7.* owner of salt seized not making it appear before the next justice, within ten days after seizure, by oath of one witness, that the salt was duly entered, and that there was a warrant for carrying away the same, shall forfeit the salt, and double the value, to the king and seizer. One justice to take affidavits of the quantity of rock salt melted and refined ; and justices to set prices of salt and rock salt, to be sold by the maker, at Easter and Michaelmas sessions, for the half year next ensuing.

By stat 9 and 10 *W. 3.* if any have paid the duty, and shipped salt, and the ship be taken, or perish at sea, the owner, on proof made in sessions of the loss of such salt, shall receive a certificate from sessions ; and on producing it to the officer, owner shall be permitted to buy and ship the like quantity mentioned in the certificate, without paying any duty for the same.

Lord mayor and court of aldermen of London, within the bills of mortality, and justices of peace in sessions, may set and publish in writing the price of salt ; and persons selling at a higher price, or refusing to sell at the price so set, forfeit for every offence 5*l.* to the king and informer, to be levied by warrant from the lord mayor, or one justice, by distress, &c.

Salt shall be sold by weight, fifty-six pounds weight to the bushel, on penalty of 5*l.* to the informer. Two justices to hear and determine offences against this act. Appeal to quarter sessions, who may determine finally. Party accused to be summoned, to be examined about the matter of fact. Two witnesses, or confession. Penalties to be levied by distress and sale in six days, if not redeemed. For want, imprisonment till satisfaction made. Forty shillings penalty for officer not attending (on notice) to see salt weighed to be shipped off ; to be levied as before, and disposed of so.

By another act, made 1 *Anne, cap. 13.* and another made 9 *Anne, cap. 21.* persons removing or conveying salt from salt-works, or place thereunto belonging, without due entry and payment or security, or without warrant, ticket, or license, forfeit

40*l.* and the salt: If no distress, to be committed to the house of correction, and whipped, and kept to hard labour, not exceeding a month.

Refusing to permit an officer to enter into works or warehouses, in the day or night, in the presence of a constable, forfeits 40*l.*

Persons hindering or obstructing any officer for the salt duties in the execution of his office, or who shall beat or abuse them, forfeit 20*l.* On refusal of payment, distress, &c. for want to be sent to the house of correction as aforesaid. Proof of offence before one justice.

No salt-maker shall act as a justice of peace in any matter relating to duties on salt.

By a stat. made 2 and 3 *Anne, cap. 14.* no salt is to be imported from Scotland, Ireland, or Isle of Man, on penalty of 20*l.* or six months' imprisonment. No salt to be brought into England from Scotland by land, on forfeiture of the salt, and 20*s.* a bushel. Persons so doing may be apprehended and brought before a justice: on proof of the fact, offender to pay penalties as aforesaid.

No salt to be delivered from any salt-works without notice to the officer appointed for that purpose, on forfeiture of the salt, and 20*l.* by owner of the salt-works.

Carrier conveying salt without a warrant or permit forfeits 20*l.* Salt shipped for exportation, and perishing in port, by sinking of the ship, &c. before exporter is allowed for a drawback, in such case, exporter, on proof before justices at quarter sessions, and on certificate, &c. from justices to collector, &c. proprietor may buy like quantity duty free. One moiety of penalties to the king, the other to informer; to be recovered as by laws of excise, or in any court of record.

By 12 *Anne, cap. 2.* master of a vessel producing a certificate to collector of salt-duties that duties were paid, or secured to be paid, and making oath of the quantity in such certificate, and that the said salt is for curing fish at North Seas, or Iceland, shall, if the said vessel be lost at sea, or taken by the enemy, on producing certificate to, &c. have duty repaid, or security discharged, provided proof be made within nine months after loss.

By stat. 5 *Geo. 1. cap. 18.* for better securing the duties on salt, offenders, in default of payment, to be sent to house of correction for three months.

In suits relating to the salt acts, the defendant may plead a general issue, and give the special matter in evidence; and if the verdict pass for the defendant, or the plaintiff be nonsuit, he shall have double costs.

No *certiorari* shall supersede execution, or other proceedings, upon any order made by the commissioners of salt, or justices of peace, in pursuance of this act.

All foreign salt imported, cellared, and locked up, before the 24th of June, 1719, in the presence of an officer for the salt-duties, shall, at the desire of the proprietor, or his agent, be turned over as stock in hand, for the use of the fishery, free from duty,



subject nevertheless to the same conditions and restrictions as all other foreign salt intended for the use of the fishery, and imported after the 24th of June, 1719.

By 6 *Anne*, *cap.* 12. and 12 *Anne*, *cap.* 2. salt shipped for Ireland, &c. and lost at sea, or taken by enemies, the proprietor or exporter is to make proof thereof, within a month after, before the justices at their sessions, and the duty is to be allowed.

By stat. 8 *Geo.* 1. *cap.* 16. every maker or curer of white herrings in that part of Great Britain called England, Wales, and Berwick upon Tweed, before he remove any white herrings (except for exportation) from the office or place where cured, must enter them at the next salt-office, and pay the duty. And the quantity must be marked on the cask; and upon the entry and payment of the duty, the salt-officer to give a permit.

White herrings removed or carried away before entry, and duty paid, or cask marked, are forfeited, and forty shillings for every cask or vessel removed; one moiety to his majesty, the other to the officer who shall seize the same.

To be recovered, levied, and mitigated in such manner as penalties by any law of excise are recoverable.

By a statute made 3 *Geo.* 2. *cap.* 20. all the duties on salt, except three pence per gallon on foreign salt imported, were taken off, and the statutes relating thereto repealed; but by a statute made 5 *Geo.* 2. they are revived, and again laid on to continue for three years, to commence from the 25th of March, 1732.

**SAVING BANKS.** By the act for the encouragement and protection of saving banks, 57 *G.* 3. *c.* 130. it is enacted, that if any number of persons who shall form any society in any part of England, for the purpose of establishing and maintaining any institution in the nature of a bank to receive deposits of money for the benefit of the persons depositing the same, and to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators, to be paid in the nature of compound interest, and to return the whole or any part of such deposit and the produce thereof to the depositors, their executors or administrators, deducting only out of such produce so much as shall be required to be so retained for the purpose of paying and discharging the necessary expenses attending the management of such institution, according to such rules, orders, and regulations as shall have been or shall be established for that purpose, but deriving no benefit whatsoever from any such deposit or the produce thereof, shall be desirous of having the benefit of the provisions of the act, such person shall cause the rules, orders, and regulations established or to be established for the management of such institution, to be entered, deposited, and filed in the manner directed by the act, and they shall be deemed to be entitled to and shall have the benefit of its provisions.

And no such institution as aforesaid is to have the benefit of the act, unless the rules, orders, and regulations for the management thereof shall be entered in a book or books to be kept by an officer

appointed for that purpose, and which book or books shall be open at all reasonable times for the inspection of the persons making deposits in the funds of such institution; and unless such rules, orders, and regulations, shall be fairly transcribed on parchment, and such transcript shall be deposited with the clerk of the peace for the county, riding, division, or place wherein such institution shall be established; which transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without any fee or reward.

And no such institution is to have the benefit of the act, unless it shall be expressly provided by the rules, orders, and regulations for the management thereof, that no person or persons being treasurer, trustee, or manager of such institution, or having any control in the management thereof, shall derive any benefit from any deposit made in such institution; but that the persons depositing money therein shall have the sole benefit of such deposits and the produce thereof, save only and except such salaries and allowances or other necessary expenses as shall, according to such rules, orders, and regulations, be provided for the charges of managing such institution, and for remuneration to officers employed in the management thereof, exclusive of the treasurer or treasurers, trustee or trustees, or other persons having direction in the management of such institution, who shall not directly or indirectly have any salary, allowance, profit, or benefit whatsoever therefrom, beyond their actual expenses for the purposes of such institution.

All rules, orders, and regulations, upon being so entered as aforesaid, are binding on the parties to all intents and purposes.

Any friendly society from time to time may subscribe the whole or any part of their funds, through their treasurer, steward, or other officer or officers, into the funds of any institution which shall take the benefit of this act, and which shall be willing to receive the same, under such terms and conditions as shall be specially provided for that purpose by the rules, orders, and regulations of such institution: provided always, that the receipt or discharge of the treasurer or other officer of such friendly society for the time being, for any money, stock in the public funds, or other security paid, transferred, or delivered, according to the requisition of such treasurer or other officer, apparently authorized to require such payment, transfer, or delivery, shall be a sufficient discharge for the same; and the institution in which such deposit shall be made, shall not be responsible for any misapplication of any such money, stock, or security, by the person or persons to whom the same shall be so paid, transferred, or delivered, or for any want of authority of the person or persons requiring or receiving such payment, transfer, or delivery.

The treasurers are to give security, if required, by the general rules of the institution. And all monies, goods, chattels, and effects whatever, and all securities for money, or other obligatory instruments and evidences or muniments, and all other effects what-



ever, and all rights or claims belonging to or had by such institution shall be vested in the trustee or trustees of such institution for the time being, for the use and benefit of such institution and the respective depositors therein, their respective executors or administrators, according to their respective claims and interests; and, after the death or removal of any trustee or trustees, shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of Great Britain.

The money is not to be placed out upon any personal security. But the trustees shall be, and they are hereby empowered to pay into the Bank of England any sum or sums of money, not being less than 5*l.* to the account of the commissioners for the reduction of the national debt, upon the declaration of the trustees of such institution, or any two or more of them, that such monies belong exclusively to the institution for which such payment is intended to be made, whether such monies shall have been deposited therein before the passing of this act, or thereafter shall be deposited therein.

Previous to such payments, an order shall be produced, and a certificate granted; afterwards the commissioners for the national debt shall issue debentures in favour of such saving banks, bearing interest at threepence per cent. *per diem*. And the trustees may demand payment of the principal and interest secured by debenture any day except the 5th of April.

The privilege of paying money into the Bank of England, and of receiving debentures for the same, shall be restricted to such institutions only which shall by one or more of their rules provide that the sums paid by one person in any one year, and applied to the purchase of the aforesaid debentures, shall not exceed the sum of 100*l.* in the first year, and 50*l.* in every year afterwards, in the whole from each depositor, except in the cases where friendly societies shall become depositors.

Every person or persons who shall have or receive any part of the monies, effects, or funds, of or belonging to such institution, or shall in any manner have been or shall be intrusted with the disposition, management, or custody thereof, or of any securities relating to the same, his, her, or their executors, administrators, and assigns respectively, shall, upon demand, give in his, her, or their account or accounts, to be examined and allowed or disallowed; and shall, on the like demand, pay over all the monies remaining in his or their hands, and assign and transfer or deliver all securities, effects, or funds, taken or standing in his or their name or names as aforesaid, or being in his or their hands or custody; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities, effects, or funds, in manner aforesaid, it shall be lawful to and for the trustee or trustees of such institution for the time

being to exhibit a petition to the justices of the peace at their general or quarter sessions of the peace for the county, riding, division, or place, wherein such institution shall be established, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers, made in pursuance of such order, shall be good and effectual in law to all intents and purposes whatsoever.

No person who is or shall be a member of any friendly society established, or to be established, under and by virtue of any act or acts relating to friendly societies, shall, by reason of such person being or becoming a depositor in any institution taking the benefit of this act, be considered as subject or liable to any penalty, forfeiture, or disability, declared or expressed, or intended so to be, by or in the rules, orders, or regulations of such friendly society; any rules, orders, or regulations of such friendly society made or hereafter to be made to the contrary notwithstanding.

In case any depositor in the funds of any institution taking the benefit of this act shall die, leaving any sum or sums of money in the said funds, or any dividends or interest due thereon, belonging to him or her at the time of his or her death, exceeding in the whole the sum of 20*l.*, the same shall not be paid to any person or persons as representative or representatives of such depositor, but upon probate of the deceased depositor, or letters of administration of his or her estate and effects. Provided always, that where the whole estate or effects of any such deceased depositor, for or in respect of which any probate or letters of administration respectively shall be granted, shall be under the value of 50*l.* sterling, no stamp duty shall be chargeable thereon, nor upon any legacy or residue or part thereof bequeathed, nor upon any share or part of the estate or effects to be paid or distributed by or under such probate or letters of administration. Provided also, that in every such case the person or persons claiming such probate or letters of administration free of stamp duty under this act shall exhibit, to the court or person having authority to grant the probate or letters of administration in such case, a certificate of the amount and value of the share and interest which the deceased depositor had in the funds of the said institution; which certificate shall be granted in such form and manner as shall have been settled by the rules, orders, regulations, or by-laws of the institution respectively, and shall be signed or testified by such person or persons as shall be directed therein; and every such certificate shall be taken and received by the court or person having authority to grant such probate or letters of administration, as evidence of the amount or value of the shares and interests of the deceased depositor in the funds of the said institution.

And in case any depositor in the funds of any such institution shall die, leaving a sum of money in the said fund, which, with the interest thereon, shall not exceed in the whole 20*l.*, it shall be



lawful for the trustees or managers of such institution, and they are hereby authorized and required, if no will shall be proved, or no letters of administration shall be taken out, within six calendar months after the death of the said depositor, to pay the same according to the rules and regulations of the said institution; and in the event of there being no rules and regulations made in that behalf, then the said trustees or managers are hereby authorized and required to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, according to the statute of distributions.

And no institution is to be subject to any loss in consequence of having paid money where letters of administration or probate may have been afterwards repealed, or deemed null and void.

Power of attorney given by trustees or depositors are not liable to stamp duty. And it is further enacted, that where provision shall be made by one or more of the general rules, orders, or regulations of any such institution, and filed as herein-before required, for a reference by arbitration of any matter in dispute between any such institution, or any person or persons acting under them, and any individual depositor therein, or any executor, administrator, next of kin, or creditor of any deceased depositor, or any person claiming to be such executor, administrator, next of kin, or creditor, then and in every such case the matter so in dispute shall be referred to such arbitrator or arbitrators as shall have been named according to the general rules, orders, or regulations of such institution; and whatever award, order, or determination shall be made, according to the true purport and meaning of the rules, orders, and regulations of such institution, shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal.

By the amended act, 58 G. 3. c. 43. it is, amongst other things, enacted, that, in order more strictly to provide against any improper investment of monies under the provisions of the former act, that the privilege of paying money into the Bank of England, and of receiving debentures for the same, shall, from and after the 1st day of October, 1818, be restricted to such institutions only which shall, by one or more of their rules, provide that the sums paid by any person who shall pay or subscribe any sum by ticket, or number, or otherwise, without disclosing his or her name to the trustees of such institution, shall not exceed the sum of 10*l.* in any one year.

And in cases where any banks for savings have been or shall be established in any town or place, and other smaller banks have been or shall be established in the neighbourhood of such town or place, as branch banks thereof, and such branch banks by their treasurers have paid or shall pay any sums into the bank in any such town or place, as a central bank, it shall and may be lawful for the said trustees, or any two of them, of any such central bank, to pay into the Bank of England, in manner prescribed by the said recited act, along with the monies belonging to such central bank,

any sum or sums of money belonging to and on account of any such branch bank : provided always, that the treasurers of such branch banks shall certify to the treasurer of such central bank, that the amount contributed by any one subscriber to any such branch bank in any one year, does not exceed the proportions required by this act.

And it is further enacted, that whenever a transcript of the rules, orders, and regulations for the management of any institution requiring the benefit of the said recited act and of this act, shall have been or shall be deposited with the clerk of the peace for the county, riding, division, or place wherein such institution shall be established, pursuant to the directions of the said recited act, such transcript shall be signed by two trustees of such institution, and shall by such clerk of the peace be laid before the justices for such county, riding, division or place, at the general or quarter sessions next after the time when such transcript shall have been so deposited ; and it shall be lawful for such justices then and there present, after due examination thereof, to reject and disapprove of such part or parts thereof as shall be repugnant to the true intent and meaning of the said recited act and this act, or to allow and confirm the said transcript, or such part or parts thereof as shall be conformable to the true intent and meaning of the said recited act and this act.

And no arbitration or other bond, &c. is to be liable to stamp duty.

SCANDALUM MAGNATUM, is the special name of a statute, and also of a wrong done to any high personage of the land, as prelates, dukes, marquisses, earls, barons, and other nobles ; and also the chancellor, treasurer, clerk of the privy seal, steward of the house, justice of one bench or other, and other great officers of the realm, by false news or horrible or false messages, whereby debates and discord, betwixt them and the commons, or any scandal to their persons might arise.

The statute hath given name to a writ, granted to recover damages thereupon.

It is now clearly agreed, that though there be no express words in the statute which give an action, yet the party injured may maintain one on this principle of law, that when a statute prohibits the doing of a thing, which if done might be prejudicial to another, in such case he may have an action on that very statute for his damages.

SCAVENGERS. That the highways of this kingdom, in general, are in a nasty condition, and that the streets of London and Westminster, and the out-parts in particular, are ill paved, ill cleaned, and ill lighted, is too obvious to every one's sight to need any further demonstration.

The highways in some places have been much mended by reason of turnpikes, erected by particular acts of parliament, obtained with much trouble and great expense ; in other they are little the



better, through knavery and mismanagement, though great sums have been, and still are daily raised.

But though there have formerly been several acts of parliament for the paving the several streets in London and the out-parts, as particularly in the 24, 25, 32, 34, and 35 *H. 8.* 13 and 23 *Eliz.* yet I do not remember any statute for cleaning or lighting the streets of London or Westminster before the restoration of King Charles II.; but in the 13th and 14th year of his reign an act passed, empowering the king to nominate twenty-one commissioners, besides certain others therein named, to survey, order, and manage the highways, streets, &c. of London and Westminster, and suburbs and other places within the bills of mortality.

It is true this act is expired, and it being in a good measure copied in most of the other acts since made on this subject, I shall not transcribe any of the clauses in it, nor shall I enlarge on the statute made the 19th of King Charles II. because being made the year after the fire of London, it serves chiefly for vesting the sole power of paving, cleaning, and lighting the streets, &c. within the city of London and liberties thereof, in commissioners, as it is hoped those of Westminster, and the out-parts, will shortly likewise be for the future.

The statute of 22 and 23 *Car. 2.* confirms and makes perpetual that of the 19th of the said king, which was only temporary before, and settles the power of the commissioners, and gives them power of raising money, and laying taxes, &c. within the city of London and liberties thereof.

And this was all that was done in this affair, till the second year of *W. and M.* when an act passed, which is the basis or groundwork on which the law, in a great measure, now stands in this matter.

By this statute, inhabitants within the weekly bills of mortality, in Middlesex, Westminster, Southwark, and Kensington, are enjoined to sweep the streets before their houses every Wednesday and Saturday, or they forfeit for every neglect 3s. 4d.

*N. B.* This penalty, by another statute, made 8 and 9 *W. 3. cap. 27.* is increased to 10s.

Laying dirt, &c. in the streets before their own houses, forfeit 5s.

Laying ashes, dirt, &c. before the houses and walls of other persons, or before church walls, or throwing any noisome thing in the common shore, highway, or private vault, forfeits 1*l.*

The respective churchwardens, and keepers of his majesty's palaces, and the keepers of the courts of justice, suffer the like penalties for the like offences.

Hooping or cleaning the vessels in the streets, mending empty coaches, or sawing timber or stone, forfeits, for every offence, 1*l.*

Scavengers, every day, except Sunday or holiday, must bring carts, and give notice of carrying away the dirt, or forfeit 2*l.*

Streets, lanes, and allies, paved at the time of making the act, are to be kept so at the charge of the inhabitants, before their re-

pective houses, or forfeit for every perch or rod 1*l.* and for every week afterwards, till it is done, 1*l.*

One or more justice or justices may certify to sessions what new ways are fit to be paved; and the sessions may take such order as they shall think fit; and the inhabitants of houses adjudged to be paved or mended must do the same from such houses to the middle of the highway, or forfeit for every perch not paved or mended 2*l.* and for every week afterwards till done, 2*l.* And when paved, &c. must be kept so, or forfeit 1*l.* and for every week afterwards till done, 1*l.*

Ancient streets must be maintained according to custom.

Assessments for scavengers of the parishes of St. Anne's and St. James's shall be rated according to the custom of the city of Westminster, and new houses to be built are to pay proportionably with others.

On Monday and Tuesday in Easter week, yearly, two tradesmen of the parish must be chose by the constables, &c. who must take upon them the office within seven days after the election and notice, or for their refusal forfeit 10*l.*

And then new ones must be chosen, who must take on them the said office, under the like penalty, to be paid to the surveyors of the highways, and to be employed towards repairing the highways. It is to be levied by warrant of one justice, &c. and in default of distress and payment within six days after demand, the offender must be committed.

Within twenty-eight days after new scavengers are chosen, the old ones must account before two justices for the money assessed and collected; and what remains in their hands must be paid to the new ones.

Justices, &c. at petit sessions may give scavengers liberty to lodge their dirt in vacant places, near the streets, satisfying the owners: and if their demands are unreasonable, justices, &c. may moderate it.

Persons aggrieved by a tax, &c. or determination of any justices, &c. may appeal to the sessions, whose order is final.

One or more assessments, not exceeding 4*d.* per pound for lands, and 8*d.* for every 20*l.* of personal estate, may be made every year by such persons as the sessions shall think fit; and the money thus assessed shall be raised and applied to the highways, according to their direction. This is to be levied by distress and sale, &c. if not paid within fourteen days after demand, rendering the overplus, charges deducted.

New sewers made in any of the said parishes since 12 *Car. 2.* shall be subject to the commissioners of sewers, who may direct making new ones, and alter any nuisances, cross gutters, and channels in the streets or lanes.

Candles must be hung out of such houses which join to the streets, from Michaelmas to Lady-day, and from the time it grows dark till twelve of the clock at night, or forfeit 2*s.* except the inhabitants agree to use lamps.



The wheels of carts must be six inches in the felly, and without iron, and drawn only by two horses after they are up the hills near the water. Owners offending forfeit, for every time such cart is used, 2*l.* for the uses, and to be levied as aforesaid.

Country carts, and carts carrying goods half a mile beyond the paved streets, are excepted.

Swine may not be kept in the houses, or backsides of the paved streets, on pain of forfeiting them to the poor.

Officers may, in the day-time, by warrant from the lord mayor, or one justice, &c. search for swine, and drive them away, and sell them, and deliver the money to the churchwardens, &c. for the use of the poor.

The cleansing of the streets, &c. within the city of London, and liberties thereof, shall be managed according to the ancient usage of that city.

Lord mayor, or any alderman, may present, upon view, any offence within the city and liberties thereof, and may assess fines, not exceeding 20*s.* for every offence, to be paid to the chamberlain of London, for the use of the city.

In actions commenced for putting 22 and 23 *Car. 2. cap. 17.* (entitled an act for the better paving and cleansing the streets, &c. in the city of London,) or this act, in execution, the defendant may plead the general issue, and give the act or special matter in evidence; and if the plaintiff is nonsuit, discontinue, or a verdict against him, shall pay treble costs. And highways leading from the east side of Clerkenwell to St. John's Street shall be paved, as that act directs.

By stat. 8 and 9 *W. 3. cap. 37.* where one side of a street or lane lies within the bills of mortality, and the other side without, the justices of peace may cause the respective inhabitants to pave the other side, under the same penalty as if the same had been within the bills of mortality.

Where there is any liberty, precinct, or village within the weekly bills, that uses to repair their own highways, and also perform days' work to other highways, and are or shall become unable, the justices of peace, at their special sessions, to be held every four months, may allow so many days' work as the said justices shall think fit to be employed by the inhabitants of such liberty, &c. and the residue of the days' work, as such inhabitants are liable to, shall be employed in repairing the other highways.

Owners of hay brought into the hay market are to pay 3*d.* per load, and for straw 1*d.* to such as the justices shall appoint, towards mending the street called the Haymarket; on refusal to pay, it is to be levied by warrant from one justice, and distress and sale in three days.

So much of the ancient highway leading from Tottenham Court, near St. Giles's Pound, towards Tyburn, as is new built on both sides thereof, shall be hereafter repaired, paved, and maintained, by such persons as have heretofore used to repair, pave, and maintain the same, under the penalties aforesaid.

By stat. 1 *Geo. 1. cap. 57.* the quarter sessions may appoint scavengers, and order the repairing or cleansing of the streets in any city or market-town, and appoint persons to make assessments on all owners and occupiers of lands and houses equally, not exceeding 6*d.* per pound per ann. to defray the charges of such scavengers, which may be collected by such as the justices think fit, and levied in eight days, by distress, &c.

Any carman, &c. riding in a cart or dray, within the bills of mortality, not having another on foot to guide it, forfeits 10*s.* to the informer and the poor of the parish.

*N. B.* The pavements of streets are to be repaired by the inhabitants of the said streets, and the scavengers are to be paid by the parishioners: persons are bound to repair their own doors at their own costs, they having the principal benefit of it. And those persons, who are thus bound to repair the pavements, are to contribute to the payment of the scavenger's rates.

By a statute made 2 *Geo. 2.* it is enacted, that on the 20th of December, yearly, unless Sunday, and then the next day, the parish officers and vestries in every parish in Westminster, and within the weekly bills of mortality, shall meet in the vestry-room, or usual place of meeting, to make and return a list of a competent number of inhabitants, to two or more justices, at a special sessions for that purpose, within ten days after such meeting; and the justices are to hold such sessions, and give notice of time and place to the constables, &c. at least two days before, and shall, out of the said lists, by warrant under their hands and seals, nominate two or more to be surveyors of the streets, lanes, and allies, for the ensuing year; which appointment shall be notified to them within six days by the constables, headboroughs, or beadles, and from thenceforth the person appointed shall take on him the said office; or if he refuse, then to forfeit 10*l.* to be applied to the uses directed by the act; and in case of refusal, or of death, the justices are to appoint another fit person, on like forfeiture; and if constables, &c. shall not return such lists to the justices, they forfeit 10*l.* for every neglect.

Every surveyor, within ten days after his entering on office, and every six weeks, or oftener, if the justices think it necessary, shall take a view of all the streets, lanes, &c. and shall make a return, on oath, to the special sessions, to be holden in the week preceding the quarter sessions, under the penalty of 5*l.* each justice, of the names of all persons whose pavements shall be out of repair; and the justices shall examine the return, and present the same, in English, to the next quarter sessions; in which presentments the justices are to insert the christian and surnames of the persons whose pavements shall be out of repair, and the streets or places, and the contents of the pavements; and the surveyors and justices may present any nuisances, and it shall have the force of a presentment on view by any two justices of highways being out of repair, and the quarter sessions are to proceed thereon accordingly.

The surveyors (if two justices think it necessary) are to give



public notice in the faults, and the names of the persons guilty ; and if not mended in twenty days after, the surveyors may cause them to be repaired, and shall be reimbursed by the parties who should have done the same ; who, if they refuse to pay, the surveyors are to apply to any justice, and on making oath thereof, they shall be paid all charges allowed as reasonable by the justices.

Where any paving belonging to an empty house is out of repair, the surveyors are to cause it to be made good, and are to give account to the justices, at their public meetings, of all such pavements as they think ought to be new paved, belonging to such empty house ; and if the justices shall think fit to have the same entirely new paved, the surveyors shall cause it to be new paved ; the charges to be settled by the justices, with recompence to the surveyors for their trouble, to be levied on the next tenant by distress ; and the tenant, whether he pays it voluntarily or by distress, is to stop out of his rent so much as he pays ; and if any house or building be burnt or pulled down before the sums so settled be levied, the money shall be levied in like manner on any tenant of the new house or building which shall be erected in the place of that so burnt or taken down, or on the materials, which shall be liable to such distress.

If any surveyor neglect his duty, he forfeits 40s. to be levied within one month after the offence committed.

If any justice neglect his duty, he forfeits 5*l.* one moiety to the prosecutor, the other moiety to the uses of this act, to be recovered by action of debt, &c. such prosecution to be commenced within six weeks after such neglect.

Where the justices shall find on view, or by presentment, any irregularity in the pavements, caused by the agents for the proprietors of water-works, and shall order the amendment thereof, the inhabitants, surveyors, or other persons, who shall cause such amendment to be made, shall be repaid by such proprietor of the water-works ; and on default of payment, the justices, on oath of the truth of the premisses, shall levy the expenses by distress of the goods of the officers of the proprietors as shall not have made payment on demand.

If any justice shall, at any special sessions, make any presentment in writing, on his view, of any offence contrary to this act, such presentment shall be of the same force as a return made by the surveyors ; and the justices are to proceed thereon, and to cause the pavements to be brought to a level as soon as may be.

All former laws for cleaning the streets, so far as they are consistent with this act, to remain in full force.

This act not to extend to the royal palaces, nor to St. James's Square, it being provided for by a particular act of parliament.

The justices in any special sessions may give any reward to the scavenger not exceeding 8*l.* per ann. to be paid out of the scavenger's rates ; and clerk of the peace shall not ask any fee on account of any thing done in pursuance of this act.

Oxford Street and Cavendish Square, in Marybone parish, in Com' Mid', and all the streets and passages now, or hereafter to be, set out in Marybone Fields, shall be deemed to be within this act and the acts *2 W. and M. cap. 8.* 8 and *9 W. 3. cap. 37.*

This act to be in force for three years from 4th June, 1729, and to the end of the next session of parliament, and shall be deemed a public act; and if any one is sued for any thing done in pursuance of this act, he may plead the general issue, and on a verdict recover treble costs.

In the case of the parish of Newington Butts, upon the statute of *2 W. and M. cap. 8.* for paving and cleaning the streets, the question between the inhabitants within this parish was, if that part of them which inhabited within the county out of the paving should be contributory to the scavenger's rates? and the court held the rate, which charged all the inhabitants generally, to be good.

By *9 Geo. 2. cap. 13.* the act of *1 Geo. 1.* for repairing of highways, is extended to market-towns.

SCOTLAND. By *5 Anne, c. 8.* the union of England and Scotland was effected, and the twenty-five articles of union, agreed to by the parliaments of both nations, were ratified and confirmed as follows: viz. the succession to the monarchy of Great Britain shall be the same as was before settled with regard to that of England. The united kingdoms shall be represented by one parliament. There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed. When England raises 2,000,000*l.* by land-tax, Scotland shall raise 48,000*l.* The standards of the coin, of weights, and measures, shall be reduced to those of England throughout the united kingdoms. The laws relating to the trade, customs, and the excise, shall be the same in Scotland as in England. But all the other laws of Scotland shall remain in force, though alterable by the parliament of Great Britain; and particularly laws relating to public policy, are alterable at the discretion of parliament: laws relating to private right are not to be altered but for the evident utility of the people of Scotland. Sixteen peers are to be chosen to represent the peerage of Scotland in parliament, and forty-five members to sit in the house of commons.

The sixteen peers of Scotland shall have all privileges of parliament, and all peers of Scotland shall be peers of Great Britain, ranking next after those of the same degree at the time of the union, and shall have all privileges of peers, except sitting in the house of lords, and voting on the trial of a peer.

It was formerly resolved by the house of lords, that a peer of Scotland, claiming and having a right to sit in the British house of peers, had no right to vote in the election of the sixteen Scotch peers: but it seems now settled, that a Scotch peer, made a peer of Great Britain, has a right to vote in the election of the sixteen Scotch peers; and that if any of the sixteen Scotch peers are created peers of Great Britain, they thereby cease to sit as representatives



of the Scotch peerage, .....  
 their room.

SEA. The sea shall be open to all merchants. The main sea beneath the low water-mark, and round England, is part of England, for there the admiralty hath jurisdiction.

SEA-BANKS. By 6 *Geo.* 2. it is enacted, that if any person, after the 24th day of June, 1733, and during the continuance of the statute 9 *Geo.* 1. *cap.* 22. shall unlawfully and maliciously break down or cut the bank of any river, or any sea-bank, whereby lands shall be overflowed or damaged, shall be guilty of felony without benefit of clergy, continued by 10 *Geo.* 2. till the 1st of September, 1744.

By 10 *Geo.* 2. *cap.* 32. if any person shall unlawfully cut off, draw up, or remove, and carry away any pile, chalk, or other materials driven into the ground, and used for securing any marsh, or sea-wall, or banks, it shall be lawful for any justice of peace residing near the place, upon complaint, upon oath, to summons the party, or to issue his warrant to apprehend and bring before him the party suspected; and upon examination or neglect, to proceed to examine the matter, and upon due proof by confession, or oath of one witness, to determine the same, and convict the offender, who shall forfeit 20*l.* one moiety to the informer, and the other to the poor of the parish, to be levied by distress and sale of goods; and for want of distress, the justice to commit the person to the house of correction for six months.

SEAMEN. By stat. 2 *Anne*, *cap.* 6. two justices of peace, or the chief magistrate of any city or town corporate, with the churchwardens and overseers of the poor of their respective parishes, by and with the consent of two justices, &c. may put boys apprentice to the sea-service, under these qualifications:

1. They must be ten years old or upwards; this is altered by stat. 4 and 5 *Anne*, *cap.* 19.
2. Such as are likely to be a charge to the parish.
3. Such whose parents are actually chargeable to the parish.
4. Those who beg for alms.

These may be bound to masters or owners of ships or vessels used to sea-service till the age of twenty-one years.

The age of the boy is to be inserted in the indenture, and that shall be taken to be his true age, without any further proof thereof.

The churchwardens and overseers shall pay the master, when the boy is bound, 2*l.* 10*s.* for cloathing and bedding, which must be allowed by the parish in their accounts.

Such an apprentice is not to be pressed till he is eighteen years old.

The parish officers must send the counterpart of the indenture to the collector of the customs in such port, and it must be sealed by the master, in the presence of the collector and constable where the master doth belong, and attested by them; and such collector must enter it in a book, and shall indorse on the indenture that it is

registered, and subscribe his name without fee; and if he neglects or refuses so to do, or makes a false entry, he forfeits 5*l*.

And this forfeiture to go to the poor of the parish from whence the boy was bound.

The collectors must transmit unstamped certificates to the admiralty of the names and ages of such apprentices, and to what ships they belong; and upon receipt of such certificates, protection shall be granted till the boy is eighteen years of age; but then he may be pressed, and the master shall receive his wages.

Any poor boy, bound by the parish to any other employment, may, with the consent of two justices, &c. at the request of the master or his executors, &c. be turned over by assigning the indenture to any master or owner of a ship, &c. for the remaining time of his apprenticeship, which assignment must be registered by the collectors aforesaid.

Every master and owner of a ship, from thirty to fifty tons, is obliged to take such an apprentice; and if he refuses, he shall forfeit 10*l*. to the poor of the parish from whence the boy was to be bound.

When the apprentice is bound, he is to be sent to the port to his master, at the charges of the parish, in the same manner as vagrants, by stat. 11 and 12 *W. 3. cap. 18*.

Two justices, &c. near the ports where any vessel shall arrive, have power to hear and determine all complaints of hard usage to such apprentices, and to make such orders as they are enabled to do in any case between master and servant.

The collectors, at their ports, are to keep a register of the names of masters and apprentices, and from what parishes they came; and must transmit true copies of such register to the quarter sessions when required; and this they must do without fee; and if they refuse, they forfeit 5*l*. to the poor of the parish from whence the apprentice comes.

Such apprentices are not to be pressed for three years next following the date of their respective indentures.

All lewd and disorderly servants, and such men and boys as are rogues, vagabonds, and sturdy beggars, shall be sent to sea by warrant from one justice, directed to the constable, who is to convey them to the next town out of the county, into his majesty's service at sea.

The forfeitures in this act are to be levied by warrant from two justices, &c. by distress and sale of the goods of the offender.

None but the contractors with the principal officers or commissioners of the navy, ordnance, or victualling office, shall mark any stores of war, or naval stores, with the marks used to the king's stores, or any stores with the broad arrow, by stamp, brand, or otherwise, upon the forfeiture of the goods and 200*l*. with costs of suits; one moiety to the king, the other to the informer, to be recovered in the courts of Westminster.

Like forfeiture by persons in whose custody such goods are found, &c.



Personating seamen, and fraudulently receiving their monies, forging letters of attorney, bills of sale, assignments, or last wills of seamen, personating the wife, relations, or creditors of seamen, and taking administration to them, forging letters of attorney, bills of sale, or other authorities, in the name of their executors or administrators, for the receipt of wages due to seamen, their aiders or abettors, being convicted, &c. shall, besides other penalties, forfeit 200*l.* as aforesaid, and be committed till paid.

No seaman's will contained in the same instrument with a letter of attorney shall be good in law.

No court or person shall take more than one shilling for the seal, writing, or suing forth any administration granted to the wife or children of any seaman dying in pay of the navy, unless his goods amount to 20*l.* the person offending forfeits 10*l.* to the party grieved.

All the powers in the aforesaid act are revived and enforced by stat. 1 *Geo. 1. cap. 24.* and justices, &c. may mitigate the penalties of that act, or in lieu thereof may inflict some corporal punishment, by whipping, or by sending the offender to some public workhouse, to be kept to hard labour for three months, or less.

Principal officers of the navy may, by warrant, cause offenders to be apprehended for making disturbances in any of the yards, &c. at pay-days, or any other occasions relating to the naval stores, and may punish them by fine, not exceeding 20*s.* or by imprisonment in the next gaol, not exceeding one week, or in the hands of the messengers attending them. The officers may discharge such fine and imprisonment, if they think fit; or for non-payment of the fine may commit to the house of correction, to be kept to hard labour for two months; the fines to be paid to the chest at Chatham, for the use of maimed seamen.

In cases where greater punishment is needful, the officers may bind such offenders to the good behaviour, and to appear at the next assizes or quarter sessions, with or without securities, and in default of security may commit to the county gaol, &c.

By stat. 4 and 5 *Anne, cap. 19.* no master of a ship shall be obliged to take an apprentice, according to stat. 2 *Anne, cap. 6.* under the age of thirteen, and unless of health and strength of body. And widows, and executors, and administrators of such master, shall have power of assigning such apprentice to any other master of a ship who has not his complement of apprentices, according to the said act, and of 43 *Eliz. cap. 2.*

No person of eighteen years of age shall be exempted from his majesty's sea-service who shall have been in sea-service before they bound themselves apprentices.

By stat. 5 *Eliz. cap. 5.* no fisherman, using the sea, shall be taken to serve as a mariner by the king's commission, but by the choice of two justices of peace next adjoining to the place where he is taken.

By stat. 11 *Geo. 1. cap. 29.* if an owner, master, &c. of a ship or vessel, shall, after 24th of June, 1725, wilfully cast away, burn,

or destroy his ship or vessel, or procure the same to be done, with design to prejudice any person that hath underwritten any policy of insurance thereon, or any merchant, or the owner of such ship, he shall be adjudged a felon, and suffer as in cases of felony without benefit of clergy.

If any of these offences shall be committed within the body of any county of this realm, they shall be tried in the same courts as felonies by the laws are to be tried. And if any of these offences shall be committed upon the high seas, the same shall be tried before such court, as by an act made 28 *H. 8. cap. 15.* (for pirates) is directed for trying of felonies done upon the high seas.

By stat. 2 *Geo. 2. cap. 36.* if any seaman shall desert or absent himself from a merchant ship, after signing the contract with the master for his wages, on application to some justice of the peace by the master, or other person having charge of the ship, the justice may issue his warrant to apprehend such seaman; and if he shall refuse to proceed on the voyage, without sufficient reason, he may commit him to the house of correction, to be kept to hard labour, not exceeding thirty days, nor less than fourteen.

SEARCH WARRANTS FOR STOLEN GOODS. In 4 *Inst.* 176. it is laid down generally, that justices of peace have no power, upon a bare surmise, to break open any man's house, to search for a felon or stolen goods, either in the day or night. To this, says Lord Hale, I can by no means subscribe. It is preparatory to the discovery of felons, and preparing evidence against them, and to the helping persons robbed to their goods. And it is found to be of great use and necessity, and to disuse or discountenance it would be inconvenient to the public. But it is fit to observe some temperaments: as, first, let oath be made of a felony committed, and of a probable cause to suspect such a house, with the reasons of such suspicion. For general warrants, to search all suspected places, are not good; for they make the party the judge. Secondly, let them express that search be made in the day-time; for, if not unlawful, they are at least inconvenient without such restriction, unless where the proof is more than a probable suspicion; for in case of positive proof, it is right to execute them in the night-time, lest the offenders and goods also be gone before morning. Thirdly, let them be directed to constables, &c. and not to private persons, though it is fit the party injured be present and assistant, because he knows his goods. Fourthly, let it command that the goods found, and the party in whose custody, be brought before some justice, to be disposed of according to law. For the buyer or receiver of stolen goods, knowing them to be stolen, is accessory to the felon, by stat. 3 and 4 *W. and M. cap. 9.* and 5 *Anne, cap. 31.* though at common law it was considered only as a great presumption of his being such.

Be the stolen goods in the suspected house or not, this warrant justifies the officer and his assistants to enter in the day-time at open doors: and if the door be shut, and be refused to be opened upon demand made, if the goods be in the house, the officer and



his assistants may, upon the general issue, by 7 *Jac. 1. cap. 5.* justify breaking open the door. And if the goods be not in the house, it seems the officer is excused, because he searches by warrant: but it seems the party is punishable that made the suggestion.

If the goods appear not to have been stolen, upon the return of the warrant, the justice is to restore them to the possessor: if they were stolen, they are not to be delivered to the proprietor, but to the sheriff, constable, &c. in order to restitution upon conviction of the offender. If they were not stolen, the party that had them is to be discharged: if stolen, but not by him, but by another that sold, &c. to him, if it appear he knew not that they were stolen, he may be discharged as an offender, and bound over as a witness. If it appears he knew they were stolen, he may, to answer the felony, be committed or bound over.

**SECURITIES,** (embezzlement of.) By the 52 *Geo. 3. c. 63.* for more effectually preventing the embezzlement of securities for money and other effects, left or deposited for safe custody, or other special purpose, in the hands of bankers, merchants, brokers, attornies, or other agents, it is enacted, that if any person or persons with whom (as bankers, merchants, brokers, attornies, or agents of any description whatsoever,) any ordnance debenture, exchequer bill, navy, victualling, or transport bill, or other bill, warrant, or order for the payment of money, state lottery ticket, or certificate, seaman's ticket, bank receipt for payment of any loan, India bond, or other bond, or any deed, note, or other security for money, or for any share or interest in any national stock or fund of this or any other country, or in the stock or fund of any corporation, company, or society established by act of parliament or royal charter, or any power of attorney for the sale or transfer of any such stock or fund, or any share or interest therein, or any plate, jewels, or other personal effects, shall have been deposited, or shall be or remain for safe custody, or upon or for any special purpose, without any authority, either general, special, conditional, or discretionary, to sell or pledge such debenture, &c. or to sell, transfer, or pledge the stock or fund, or share or interest in the stock or fund to which such security or power of attorney shall relate, shall sell, negotiate, transfer, assign, pledge, embezzle, secrete, or in any manner apply to his or their own use or benefit any such debenture, &c. or plate, jewels, or other personal effects, or the stock or fund, or share or interest in the stock or fund to which such security or power of attorney shall relate, in violation of good faith, and contrary to the special purpose for which such things shall have been deposited in the hands of such persons, with intent to defraud the owner or owners of any such instrument or security, or the person or persons depositing the same, or the owner or owners of the stock or fund, share or interest, to which such security or power of attorney shall relate, every person so offending in any part of the united kingdom shall be guilty of a misdemeanor, and being thereof convicted, according to law, shall be sentenced

to transportation for any term not exceeding fourteen years, or to receive such other punishment as may by law be inflicted on a person or persons guilty of a misdemeanor, and as the court before which such offender or offenders may be tried and convicted shall adjudge.

And whereas it is usual for persons having dealings with bankers, merchants, brokers, attornies, and other agents, to deposit or place in the hands of such bankers, merchants, brokers, attornies, and other agents, sums of money, bills, notes, drafts, cheques, or orders for the payment of money, with directions or orders to invest the monies so paid, or to which such bills, notes, drafts, cheques, or orders relate, or part thereof, in the purchase of stocks or funds, or in or upon government or other securities for money, or to apply and dispose thereof in other ways or for other purposes; and it is expedient to prevent embezzlement and malversation in such cases; also it is further enacted, that if any such banker, merchant, broker, attorney, or other agent, in whose hands any such sum or sums of money, &c. shall be placed, with any order or orders in writing, and signed by the party or parties who shall so deposit or place the same, to invest such sum or sums of money, or the money to which such bill, note, draft, cheque, or order, as aforesaid, shall relate, in the purchase of any stock or fund, or in or upon government or other securities, or in any other way, or for any other purpose specified in such order or orders, shall in any manner apply to his or their own use and benefit any such sum or sums of money, or any such bill, note, draft, cheque, or order for the payment of any sum or sums of money as herein-before mentioned, in violation of good faith, and contrary to the special purpose specified in the direction or order in writing herein-before mentioned, with intent to defraud the owner or owners of any such sum or sums of money, or order for the payment of any sum or sums of money; every person so offending in any part of the united kingdom, shall in like manner be guilty of a misdemeanor, and being convicted thereof according to law, shall incur and suffer such punishment as is herein-before mentioned.

SEDUCTION OF ARTIFICERS. See ARTIFICERS.

SEIZURE OF GOODS FOR OFFENCES. No goods of a felon or other offender can be seized to the use of the king before forfeited; and there are two seizures, one verbal only, to make an inventory, and charge the town or place, when the owner is indicted of the offence; and the other actual, which is the taking of them away afterwards on conviction, &c.

SEQUESTRATION, is the separating or setting aside of a thing in controversy from the possession of both those who contend for it. And it is of two kinds, voluntary, or necessary; *voluntary*, is that which is done by consent of each party; *necessary*, is what the judge doth of his authority, whether the parties will or not. It is used also for the act of the ordinary disposing of the goods and chattels of one deceased, whose estate no man will meddle with.



SERJEANT AT LAW, is the highest degree taken in that profession, as that of a doctor is in the civil law. To these serjeants, as men of great learning and experience, one court is set apart for them to plead in by themselves, which is the court of common pleas, where the common law of England is most strictly observed; yet though they have this court to themselves, they are not restrained from pleading in any other courts, where the judges (who cannot be elevated to that dignity till they have taken the degree of serjeant at law) call them brothers, and hear them with great respect, next to the king's attorney and solicitor general. These are made by the king's mandate, or writ.

SERJEANTS' INN, CHANCERY LANE. This inn consists of two small courts, surrounded by the judges' chambers, which are spacious and handsome rooms. The principal entrance is from Chancery Lane, and fronts the hall: the second court communicates with Clifford's Inn, by means of a small passage. The whole of the buildings are modern, and the work of the last century: the only parts of them that merit notice are, the hall and the chapel.

The ascent to the hall is by a very handsome flight of stone steps and ballustrade. It is built of brick, with stone cornices, and ornamented in front with a handsome pediment, surmounted by a turret and clock. The inside is not large, but forms a well-proportioned apartment; and the windows, like those of most of the other halls, are decorated with armorial bearings in stained glass. The chapel is a small neat edifice, with seats for the judges, but is no ways remarkable.

This inn did not attain its present appellation of "Serjeants' Inn" till about the year 1484; previous to which it was called "Faryngdon's Inn, in Chancellor's Lane;" and still earlier, viz. in the 17th of Ric. II. it was mentioned by the name of "*Tene-mentum domini Joh. Skarle.*" It was at this period let by the Bishop of Ely's appointment, whose estate it was, to one of the clerks of the chancery, as appears by the bailiff's account to the then bishop. In 1401 it is called *Hospicium domini Joh. Skarle.* About three years afterwards, viz. in 1404, in another account it is thus noticed:

*Dominus Rob. Faryndon, clericus dom. regis habet pensionem sibi concessam ab episcopo de vil. xiiis. iiiid. per annum percipiendam de redditu hospicii domini in Chancelers Lane, et eâ occasione tenet idem hospicium.* In the account of 7 Hen. IV. it is said, *hospicium, nuper Faryngdon in Chancelers Lane, extitit vacuum per dimidium anni ad decasum iiii. vis. viiiid.;* and in 8 Hen. IV. *Hospicium domini Joh. Skarle conceditur cuidam clerico cancellariæ per præceptum domini;* but in 1411 it was called Faryndon Inne.

It is probable that the serjeants at law had lodgings here at this time; for within three years afterwards, viz. in 1414, the bishop's bailiff accounts for the repair of Askham's chamber, by which it seems that the lodgings were let apart: soon after, however, the whole house was entirely demised to the judges, and others learned







SERJEANT'S INN.  
(Chancery Lane)

Pub. May 20 1800

in the law; for in 1416 there is accounted to the bishop *vi. xiiis. iiid. pro Faryndon's Inn in Chancellors Lane dimisso Rogero Horton et Willielmo Cheney justiciariis, et Waltero Askham apprentisio legis.*

Besides this Walter Askham, there was about this time one Robert Askham, serjeant at law, who was of council to the Bishop of Ely, and had *xls. per annum* pension for the same.

It seems that the judges and serjeants were not the constant tenants to the bishops in those days for this house; for in 1425 these are the words of the accompt: *Hospicium in Chancelers Lane stetit inoccupatum per totum annum circa reparationem ejusdem et contra annum sequentem dimittitur J. Martin, et Jacobo Strangwiz, et T. Rolf, justiciariis ad v. lib.*; and then soon after (*viz.* 1430) it had the name of *Hospicium Justiciariorum.*

In an. 1440 it was again demised "*Joh. Hody et aliis servientibus legis,*" for the rent of *vi. per an.* In 1474 it was let to Sir Robert Danby, knight, then chief justice of the court of common pleas, and other the judges of that time, at *iiii. per an.* And two years after, in 1476, to Sir Thomas Grey, knight, at the like rent of *iiii. per ann.*; which rent from him, the said Sir Thomas Grey, is accounted for from that time till the year 1481 inclusive. And in 1484 the same Sir Thomas Grey had a new lease thereof, by the name of *Hospicium vocatum Serjeants Inne in Chancelers Lane,* at *iiii. per an.* doing all repairs; which rent he paid till the year 1490; how much longer does not appear; for in 1492 it was in the bishop's hand for lack of a tenant; but after this it was but a while out of the judges' and serjeants' tenancy; for in 1508 (which was the last year of the reign of King Henry VII.) it was demised by indenture by the name of *Hospicium in Chancelers Lane vocatum Serjeants Inne* to John Mordaunt and Humphrey Coningsby, (then two of the king's serjeants at law,) at the rent of *iiii. per annum,* keeping all repairs.

In 2 Ed. VI. T. Goodrick, then bishop of Ely, by a lease bearing date 17 Dec. demised it to Chr. Fulnetty, his brother-in-law, for *lxxxi* years; which lease coming by mean assignment to Sir Anth. Ashley, knight, and then by surrender to Bishop Felton, that bishop granted it to the said Anthony for three lives, (*viz.* of Philippa, then his wife, afterwards married to Carey Rawley, Esq. and two of his servants.)

SERJEANTS' INN, FLEET STREET. This inn retains its ancient name, but is at present little more than a mere private court, having been deserted by the judges on the buildings of the old inn falling to decay. It adjoins the north-east corner of the Temple, with which it has a communication by means of a narrow passage; but the principal entrance is from Fleet Street, where there are handsome iron gates, and was formerly a lodge, and a porter kept.

This place was a residence of the serjeants at law at least as early as the reign of Henry VI. and apparently before; for in the year 1442 it is demised under the following "law Latin description" of *unum messuagium cum giardino, in parochia S. Dunstani in Fleet*



*Street, in suburbio civitatis Lond. quod nuper fuit Johannis Rote, et in quo Joh. Ellerkor, et alii servientes ad legem nuper inhabitaverunt.*

The above lease was granted by the dean and chapter of York, whose estate it then was, (and possibly now is,) to one William Antrous, citizen and tailor of London, for eighty years, at the rent of ten marks a year. This person is supposed to have been a sort of steward to the judges, and to have occupied some part of the mansion himself; for in a second lease, afterwards made to John Wykes by the same dean and chapter, (viz. in 1474,) for the like rent and term, it is expressly stated, that the said John Wykes inhabited therein.

In the 15th of Henry VIII. this inn was by a third lease, bearing date the 20th of June, demised by the said dean and chapter directly to Sir Lewis Pollard, knight, then one of the justices of the court of common pleas, Robert Norwich and Tho. Inglefield, the king's serjeants at law, John Newdigate, William Rudbale, Humphrey Browne, William Shelly, and Tho. Willoughby, serjeants at the law, and William Walwyn, the king's auditor in the south for his dutchy of Lancaster, for the term of thirty-one years, at the rent of 53s. payable half yearly.

The ancient inn having been burnt down in the fire of London, on the lease being renewed by the dean and chapter in 1670, the whole was rebuilt by a voluntary subscription of the serjeants; which subscription was to be repaid by a particular mode agreed on among themselves. The chapel, hall, and kitchen, were erected with the overplus of a sum of money deposited by seventeen new-created serjeants, after deducting about 400*l.* for their feast. The other buildings were finished at the expense of Lord Chief Justice Kelynge, and Sir Thomas Twysden, Sir Christopher Turner, Sir Thomas Tyrrel, and Sir William Wilde, judges of the court of king's bench; and the following ten serjeants at law, Brome, Hollaway, Ellis, and Willimot, who built the east side, and Serjeants Goddard, Turnor, Barton, Brampton, Goodfellow, and Powys, who built the western side. The whole inn has been again rebuilt within these few years; and on the site of the ancient hall (which was long used as a chapel) the amicable society have lately erected a very elegant building for the transaction of their business, which is a great ornament to the place.

SERJEANTY, signifies in law a service that cannot be due from a tenant to any lord, but to the king only; and it is either grand serjeanty or petit serjeanty.

*Grand serjeanty*, is a tenure whereby a person holds his lands of the king by such services as he ought to do in person, as to carry the king's banner, or his lance, or to carry his sword before him at his coronation, or to do other like services; and is called grand serjeanty, because it is a more worthy service than the service in the common tenure of escuage.

*Petit serjeanty*, is where a person holds his land of the king, to furnish him yearly with some small thing towards his wars, as a

bow, lance, &c. And such service is but soccage in effect, because such tenant, by his tenure, ought not to go nor do any thing in his proper person, but to render and pay yearly certain things to the king.

**SERVANTS.** Two justices may warn all single persons, under the age of thirty years, to go to service at a time they shall limit; and any woman above the age of twelve years, and under forty, being unmarried, may by two justices be compelled to go to service; and if they refuse so to do, and continue to live idly, having no visible estate, or a lawful way to maintain themselves, they may be sent to the house of correction, or bound over to the sessions.

Persons having no lands, and such which are bred to no trade to get a livelihood, the churchwardens and overseers of the poor of the parish have power to set them to work; and if they refuse to work, one justice may send them to the house of correction; as he may likewise such persons which refuse to work for reasonable wages.

One justice may order such as he thinks fit to work at harvest; and if any shall refuse so to do, he may put them in the stocks for a day and a night: and artificers may be compelled to work in hay time and harvest; and if they refuse they will be liable to the same penalties.

No man may retain a servant for less than one whole year, by the ancient statutes; and therefore if a man hire a labourer, &c. to serve him generally, this retainer is good for one year, and he shall be paid the wages assessed by the justices in their sessions.

And where a servant is retained for a year, according to the statute, and the master dieth within that time, the executor must pay the wages.

By stat. 12 *Anne*, cap. 23. such as have no legal settlement, or vagrants, or common beggars, for two years past, (though formerly settled,) or dangerous and incorrigible rogues, within that act, may be forced to serve seven years' apprenticeship to any that will take them, and may be afterwards sent to the plantations, provided the master gave a recognisance of 40*l.* not to sell them to any alien; and any justice may take such recognisance, and must transmit it to the next quarter sessions, to be there filed.

If a woman servant marrieth, she must serve out her time; and if both man and wife agree to serve, they must perform the agreement.

Any one justice of peace may license, under his hand and seal, such labourers as pass, in hay-harvest and corn-harvest, from one county to another to work.

Every justice of peace may command vagrant persons to prison, if they will not serve.

If a man retaineth another upon condition, it is a good retainer. So if one is retained to serve during his life.

If any labourers, having undertaken work by the great or lump, shall depart from the same before it is finished, (except it be where



the wages agreed on by the master are refused payment, where leave is given by the master, or where the servant is taken into the king's service, or shall have other lawful excuse,) they shall be committed for a month without bail, and forfeit 5*l.* to the party grieved; to be recovered by action of debt, &c.

Where labourers work by the day, they are to work from five in the morning till seven at night, from Lady-day till Michaelmas, and all the rest of the year from twilight to twilight; but in the summer half year they are to be allowed two hours for breakfast and dinner; and from the middle of May to the middle of August, half an hour more for sleeping; and in the winter an hour and a half only for breakfast and dinner is to be allowed; and for the absence of every hour the master may defalk one penny.

Justices, in their Easter sessions, have power to assess the wages of artificers, labourers, servants, &c. yearly, and are to proclaim the same in the county; but if there is no alteration in the old rates, then there is no need of such proclamation. Every justice absenting at the taxing of wages, not having a reasonable excuse, shall forfeit 10*l.*

If any master shall give more wages than shall be so assessed, he shall forfeit 5*l.* and may be committed for ten days, without bail; and the servant which takes more wages, being convicted before two justices, shall be committed for twenty days; but a master may reward a servant as he pleases, so as it be not by way of contract upon the retainer.

Retainers, or promises of payment of wages, contrary to the statutes, and all bonds, &c. for that purpose, are void. And if a man enters into bond not to use his trade, this bond is void; but if he binds himself not to use his trade in a particular place or town, that bond is good.

All payments for work done in the woollen, linen, fustian, cotton, and iron manufactures, must be in current money, and not in cloth, victuals, or other commodities. And all the wool delivered them to be wrought shall be first weighed, and the true weight thereof declared.

The offender in either of these cases forfeits to the labourer double the value of what shall be due for his work.

But if the labourer shall be guilty of any fraud or fault in his work, then he must answer to the owner double the damages by him sustained.

By stat. 10 *Anne*, cap. 16. clothiers, or others concerned in the woollen manufacture, shall make payment in money to the persons employed for all work done in relation thereto, and not (in lieu of payment) impose or deliver any sort of goods or wares for such work; or for every offence forfeit 20*s.* This penalty is augmented to 40*s.* by 1 *Geo.* 1. cap. 15.

All offences against 1 *Geo.* 1. cap. 15. (saving where owner, &c. refuse payment of the forfeitures for want of sufficient length or breadth in admeasurement,) must be prosecuted within forty days after committed or discovered.

The justices ought to certify in chancery their rates of wages made at Easter, though they then but continue the same that were the year before. Stat. of wages pleaded to retainer of a shepherd, and that statute as to wages explained.

Action of debt for wages lies against an executor, but that must be where one is retained that is compellable to serve. In an action upon the statute for wages, master cannot wage his law.

If a servant shall refuse to do his work, that is a departure in law, although he stay still with his master.

By stat. 21 *H. 8. cap. 7.* if a servant above the age of eighteen years goes away with his master's goods delivered to him to keep, to the value of 40s. with an intent to steal or embezzle them, it is felony; but this statute does not extend to apprentices. And when a master delivers a bond to his servant, who receives the money, and goes away with it, or if he deliver goods to his servant to sell in a market, which he doth, and runs away with the money, these cases are not within the statute, because the servant had not the money by the immediate delivery of the master.

By stat. 12 *Anne, cap. 7.* if any servant or other person purloins, embezzles, steals, or makes away his master's goods, &c. in the house or outhouse, though it be not broke open, to the value of 40s. it is made felony without benefit of clergy. But this does not extend to apprentices under fifteen years old.

It was a question whether an indictment would lie for enticing a servant or an apprentice out of his master's service, and to carry away his goods; for it is but a private injury, and not in its nature public, and therefore an action on the case lies for enticing, but trespass will lie for taking him out of his actual service. And the court, upon a motion in arrest of judgment, was of that opinion, that an indictment would not lie.

Servants assaulting master, mistress, dame, or overseer, are to be committed to prison by two justices for one year, or less; or to be bound over to the sessions, there to receive such open punishment as shall be thought convenient, life and member excepted; the said offence being proved before the said justices, by confession of the said servant, or by the oath of two witnesses.

Upon complaint made to any one justice of a servant, workman, or labourer, making an assault or affray upon his master, &c. he may bind the offender to his good behaviour, and so to the next sessions, and there he may be convicted, and punished according to the statutes.

If a man delivers money to his servant to keep, or plate to his butler, or a horse to his groom, or sheep to his shepherd, and such servant goes away with them, this is felony by the common law in that servant (for these goods were always in the master's possession, and kept and used by the servant to the master's behoof); but yet there was much difference of opinions herein; for clearing whereof, the stat. 21 *H. 8. cap. 7.* which was made perpetual by stat. 5 *Eliz. cap. 10.* provided, that all servants of eighteen years of



age (other than apprentices) to whom any money, goods, or chattels, &c. should be delivered by their master or mistress to keep, of the value of 40s. or above, if such servant shall go away with, or embezzle, or convert to his own use, any such money, goods, or chattels, of that value, with intent to steal the same, or to defraud his master or mistress thereof, it shall be felony; but this must be prosecuted within one year after the offence. But if the servant shall embezzle, or go away with any goods of his master's, which were not delivered to him, this is felony, though they be under the value of 40s.

If one of my servants delivers to another of my servants goods of mine, (to the value of 40s.) and he goes away therewith, or converteth them to his own use, this is felony within the statute, for this shall be construed to be my delivery.

If a man delivers goods to one to keep, and after retains the same person in his service, who after goeth away with those goods, this is no felony, by 21 *H. 8. cap. 7.* because he was no servant at the time the goods were delivered to him.

If my receiver of my rents receive ten pounds of my tenants, and runs away therewith, it is no felony; for the statute is, where the master delivereth to keep, &c.

A master may not discharge his servant before the end of the time agreed, without some reasonable cause, of which a justice of peace must judge; neither shall he put him away after the end of his term, without giving a quarter's warning before two witnesses, on pain of forfeiting 40s. And a servant ought not to be discharged from his service by reason of sickness, or any other disability by the act of God; and a master is obliged to find meat and drink, and other necessaries, for the servant.

And where a servant hired for a year shall depart before the expiration of his term, without cause allowed by a justice, or shall leave his service after the term ended without giving a quarter's warning before two justices, as in the case of the master, two justices may commit him, without bail, till he give security to serve the time agreed. Or by stat. 7 *Jac. 1. cap. 4.* one justice may send him to the house of correction, there to be punished as an idle person; but both master and servant may part by consent; and in that case the justices have nothing to do with it.

If a master putteth away his servant, he must pay him his wages to the time he served; but if the servant quitteth his service before the end of the time agreed, he shall forfeit all his wages.

The wages of all husbandmen, artificers, weavers, labourers, servants, and other workmen whatsoever, by the year, month, week, day, or otherwise, with or without meat and drink, must be rated and settled by the justices of the peace at their quarter sessions next after Easter, or at a general meeting within six weeks after Easter; and this the sheriff is to proclaim; which being done, every man is bound to observe them. But it seems they are not bound to this rate on either side till it be proclaimed.

The statute of 20 *Geo.* 2. for the more easy recovery of servants' wages, see under title *WAGES POST.*

None may put away his apprentice himself, nor can he be discharged but by order at the quarter sessions, under the hands and seals of four justices, *quorum unus*, and that in the sessions, and cannot be elsewhere.

If a servant come not according to promise, or refuse to do his work, though he stay with him, this is a departure in law.

All offences against 5 *Eliz. cap.* 4. may be punished at the quarter sessions, or special sessions.

Servant departing into another shire is indicted for it in the county whence he departed. The justices of the peace may award a *capias* to the sheriff of that shire whereunto he departed, returnable before themselves.

The sufficiency of the cause of the master's putting away of his servant, or the servant's departing from his master, within his term, must be proved at the quarter sessions.

The master may discharge his servant by word, but an apprentice cannot be discharged except it be by writing, for that an apprentice cannot be but by writing.

A master retaining a servant in husbandry, not having a testimonial or certificate from his master, living in the same county, he shall forfeit 5*l.*

If a servant depart without a testimonial, he shall be committed; and if he does not procure one within twenty days, he shall be punished as a vagabond; and so he shall be if he be taken with a counterfeit testimonial; but this is not much in practice.

The testimonial must be thus: Be it remembered, that A. B. servant to C. D. of, &c. husbandman, is licensed to depart from his said master, and is at his liberty to serve elsewhere, according to the statute in that case made and provided. In witness, &c.

The testimonial must be delivered to the servant, under the hand and seal of the constable, or other head officers, and two freeholders of the city or parish.

The stat. 5 *Eliz. cap.* 4. extends not to serving men, but only to servants in husbandry and handicrafts.

Justices of peace shall meet twice in the year, to inquire of the breaches of the statute 5 *Eliz. cap.* 4. and shall have 5*s.* per diem for their wages.

The justices cannot punish a bad master, but they may discharge the apprentice from him; but they may either punish or discharge a bad apprentice. And the sessions have originally discharged many bad apprentices, without any previous application to one justice.

SET-OFF, is when the defendant acknowledges the justice of the plaintiff's demand on the one hand, but on the other sets up a demand of his own, to counterbalance that of the plaintiff, either in the whole or in part; as if the plaintiff sue for 10*l.* due on a note of



hand, the defendant may set-off 9*l.* due to himself for merchandize sold to the plaintiff.

The action in which a set-off is allowable upon the statute 2 and 3 *G. 2. c. 22* and 24. are debt, covenant, and assumpsit, for the non-payment of money; and the demand intended to be set-off must be such as might have been made the subject of one or other of these actions. A set-off, therefore, is never allowed in actions upon the case, trespass, replevin, &c. nor of a penalty, in debt on bond conditioned for the performance of covenants, &c. nor of general damages in covenant or assumpsit; but where a bond is conditioned for the payment of an annuity, a set-off may be allowed. A debt barred by the statute of limitations, cannot be set-off; and if it be pleaded in bar to the action, the plaintiff may reply the statute of limitations; or if given in evidence, on a notice of set-off, it may be objected at the trial.

In bankruptcy cases, mutual debts and credits may be set-off, notwithstanding a secret act of bankruptcy.

SEWERS. Justices of peace being often put into commission of sewers, it may not be thought improper to say something on that head.

The first statute of any consequence concerning them is that of the 6th *H. 6. cap. 5.* though the kings of England might and did grant commissioners for the surveying and repairing sea-banks, rivers, &c. and this is founded on the king of England's dominion and sovereignty over the four seas; and therefore likewise the ground covered with water of right belonging to him, by consequence it is a royal escheat to the crown when left dry.

But lands which are sometimes wet, and sometimes dry, are not relinquished, and therefore may belong to the subject, who may likewise have profits arising on the sea, as a free fishery. So tithes of fish may be due to the parson, and this, though not in a parish, he may have either by prescription or custom; and lords of manors may be entitled to lands between high and low water mark; for such lands lie dry every day.

But to prevent the inundation of the sea, the statute of 23 *H. 8. cap. 5.* was made, which was a temporary law, but made perpetual by 3 *Ed. 6. cap. 1.*

In this law there is a form of the commission, (which must be under the great seal) and the oath of the commissioners is also set forth at large.

The commissioners are a court of record (though not called so in the statute) and have powers to make orders, which have the force of judgments, and may issue out process to compel the performance of their orders; and therefore, when six of the commissioners sit by virtue of the commission, they are allowed to be a court of record, as in Gregory's case.

They cannot intermeddle unless in case of public damage, as well as in public streams; for if they decree a stream to be straitened, so that the meadows of a particular person are over-

flowed ; this is a private damage, and an action on the case will lie for it.

But they have power over — { the person by } fine,  
 { the goods by — } amerciamment,  
 { the lands by — } imprisonment ;  
 — distress and sale ;  
 — charging them by sale :

And first, they may fine for ill language, or for contempt of the commissioners in court, or for any disturbance there ; for contemning their orders ; for refusing to obey them : they may fine their officers for neglecting their duty, for refusing to accept of an office, being chosen, or misdemeaning himself when in office ; for setting up piles and stakes in great rivers, this being a purpresture, which is in nature of a nuisance at land ; but then it must be presented to be *vi et armis*.

They may fine the sheriff if he doth not attend, upon notice ; or if he neglect to return a jury, having a warrant from them for that purpose : and may fine a juror for departing after his appearance is recorded.

By 13 *Eliz. cap. 9.* these fines, and likewise amerciaments must be every year estreated into the exchequer by the clerk of the commissioners, or he forfeits 5*l.* for every default.

They cannot impose a fine upon a township, and levy it upon one man ; for it ought to be upon every inhabitant in respect of his estate.

Amerciaments are usually set by the jury, and are generally for offences which consist *in non agendo* ; and in this respect they differ from fines : for these are set on offenders for doing what they ought not. And therefore, offences for which persons are amerced cannot be found to be by force, because they arise by sufferance, neglect or nonfeasance ; as by suffering walls or banks to be in decay, by neglecting to repair a bridge, causeway, or to cleanse a river, and the like.

But in some cases they may be said to be done *vi et armis* ; as for casting dirt, sand, &c. in a river, for that is a purpresture, and then the offender may also be amerced. Amerciaments may likewise be sent by the presentment of surveyors.

But the commissioners cannot imprison for disobeying their orders, as they may for a contempt in their presence.

A tax ought to be made according to the land, viz. the quantity and quality of acres, and not according to the number of persons.

And where a person refuses to pay a rate or tax which is imposed on him, the commissioners may grant a warrant to distrain for it.

And, in such case, the goods of the person upon whom it is imposed may be taken any where ; but if it be upon a presentment *ad reparandum vel amovendum*, then the distress must be taken within the bounds of the commission.

Where an assessment is made upon particular lands, a stranger's goods may be taken there, but not otherwise ; but where lands are



not charged, but the person only, as by fines, amerciaments, then the goods of the proper person must be taken, and no other.

These goods may be sold, but not without warrant from the commissioners; and so long as they remain in the custody of the officer who acts under the commissioners, they cannot be replevied, but the goods may be replevied after they are sold.

Lands may be sold for rates and charges, imposed by the commissioners, which lie in payment.

But yet where a man holds lands by the payment of a certain sum towards the repair of a sewer, though this consists in payment, yet, upon this neglect, the commissioners have no power until they first make an order, for the payment, &c. because it ariseth by the tenure of the land, and not by virtue of the statute.

But if lands are held generally to repair, &c. and the sum certain is not known, though this is a payment which ariseth likewise by tenure, yet if the commissioners impose a sum, and the person neglects to pay it, the lands may be sold by their decree.

But no decree can be made for sale of lands which are not within the limits of the commission; nor for a copyhold, because that might be to the prejudice of the lord; nor for non-payments of fines and amerciaments, because those are mulcts or punishments set upon particular persons, and due to the king.

But now by stat. 7 *Anne, cap. 10.* any six of the commissioners may decree the sale of copyhold lands, so as the purchaser compound with the lord of the manor for the fine; and then the lord shall at the next court grant under the vender such copyhold lands, &c. for such estate as shall be decreed by the commissioners to him, reserving the ancient rent, and shall likewise admit him tenant.

And six of the said commissioners may, by warrant under their hands and seals, give power to any person to levy the money by them taxed upon any lands chargeable with any taxes by virtue of their commission; and this shall be done by distress and sale of the goods of the party who shall not pay, or refuse to pay the same, rendering the overplus, and deducting reasonable charges.

These decrees must be certified into the chancery to have the king's assent, otherwise they are not binding; but that being done, a decree upon tenant in tail will bind his heirs: it will likewise bind a *feme covert* or infant, but not a prebendary, parson, dean or bishop, who are seised in their politic capacities, because they are restrained by particular statutes from making any alienation.

Presentments in a court of sewers may be traversed, and tried there, but not what the commissioners do upon their view: so if they fine a person for a contempt, it is not traversable, because it is the act of the court; but if the party is aggrieved, he must bring a bill of equity.

Such lands as lie upon an ascent, and can be in no danger of an inundation, are exempted from being taxed. So likewise where persons are bound by tenure, custom or prescription, their lands are exempted. Tithes likewise shall not be charged, nor lands,

which by special custom are charged to do other repairs, but not *in non reparando* generally.

If a wear or mill, &c. is built on a navigable river, or an ancient wear inbansed, the commissioners may order the owner to pull down the one, and abate the other; and if he continue them, or build them up again, he forfeits one hundred marks.

If a stranger sets up piles or stakes, he is to be fined or amerced, and may be ordered to remove the nuisance.

And if it cannot be found who committed it, the commissioners may order those to abate it who are likely to receive most damage.

Sewers, where no passage of boats is used, nor where the water doth not ebb and flow, are not under the survey of the commissioners, by virtue of this statute, because their commission extends only to walls, ditches, banks, &c. by coasts of the sea, and marsh grounds, which are damaged by the ebbing and flowing thereof, or of fresh waters descending therein: and therefore a particular law was made 3 Jac. 1. cap. 14. that the walls, ditches, &c. in or about London, where no such passage is used, and where the water falls into the Thames, shall be subject to the said commission.

By stat. 23 H. 8. cap. 5. the commission of sewers was to continue no longer than three years; but now by a subsequent law, viz. 13 Eliz. cap. 9. the term is enlarged to ten years, unless it shall be repealed or determined by a new commission or *supersedeas*.

And notwithstanding such determination by *supersedeas*, yet the laws and orders made by virtue of such commission before it is determined, shall continue in force, without any return thereof made into chancery, and without the royal assent, until they shall be altered, repealed, or made void by the new commissioners, or any six of them.

But then these orders must be written in parchment, indented, and under the seals of the commissioners, or six of them; one part whereof may remain with their clerk, and the other part where they shall appoint: which law shall then continue in force for the space of one year next after the expiration of ten years from the teste of the commission.

And in the same statute it is enacted, that the commissioners shall not be compelled to make a return of a certificate of their laws or orders, nor be fined for that cause.

But this must relate to certificates and returns made into the chancery, and not into B. R. upon *certiorari's* delivered; and therefore they have been fined after the delivery of such writs.

And if there is no new commission within that time, then the justices of peace may execute these laws for that year; but there must be six of them, and they must be justices, &c. of the county where the said laws were to be executed by virtue of the commission expired.

But a new commission being once issued, though within the year, the authority of the justices is then to cease.



It has been held that these commissioners, upon great occasions, may make orders for making new banks and cuts, as well as for repairing the old, so as they compound with the owners of the soil.

But this is contrary to the resolution in the case of the Isle of Ely in the 10 *Rep.* where it is held that the commission extends only to reparation and new making ancient walls, gutters, &c. and not for the cutting new rivers; for a tax for new inventions, though profitable, must be raised by a voluntary contribution.

Where one is bound by prescription or tenure, or otherwise, to repair, he ought to do it, if the danger is not irreparable: but if it be so by his fault or neglect, and he is not able to repair, every one who hath any damage may have an action against him.

But if the danger is inevitable, by reason of the extraordinary rage and violence of the waters; there, to prevent a public inconvenience, the commissioners may tax all who are likely to have any loss, though one is bound to repair.

And, in such case, they ought not to tax him or them only, who have land next adjoining.

They may proceed by a jury impanelled to inquire who hath set up any impediments, who have neglected to repair, &c. who are bound by custom or prescription, tenure or covenant, and what quantity of lands, what ground lies within the reach of the waters, to which any damage may be done.

And if the jury find that such a person ought to repair, though he remove it into B. R. they will not quash it, or grant a new trial until it is repaired; and there, if upon a new trial he be acquitted, he shall be reimbursed.

They may also proceed by view, &c. by seeing the fences, discoursing with workmen what is necessary to be done, and how much it will cost, &c.

Those who have land fronting the sea, are obliged to repair, unless some other person is bound to repair by custom or prescription.

The owner of a bank or wall is obliged to repair by prescription *ratione terræ*; but bodies politic may be bound by custom, without any land.

One may be bound to repair *ratione tenuræ*; as where land is given for that purpose, or by covenant; but this doth not bind the heir, unless he hath assets by descent from him who entered into covenant.

A township may be taxed, and the tax levied upon one person; but then it ought to be on such a person who is to bear some part of the charge, and not upon one wholly exempted.

The person thus taxed may complain to the commissioners, who may make an order for a contribution according to the quantity and quality of the land of such who are liable to contribute; and they may award process to compel them to pay it.

But the best way is, when they have agreed how much to set on a township, then to send for some of the inhabitants, and by their assistance to make a rate.

The parson is not liable for his tithes, unless by custom; but for his glebe he is: but if the tithes are in the hands of a layman, then they are liable to be taxed.

Annuities by prescription issuing out of lands chargeable to the tax, are not liable to be rated; for the land shall not be doubly charged.

Those who have common of fishery, turbary, or pasture in great fens or marshes, are liable to be taxed: but those who have common in lands sown after the corn-severed, are not.

Copyhold is chargeable; and by 7 *Anne*, cap. 10. the commissioners may sell the land for non-payment.

Persons who have the profits of fairs, are not to be charged with the profits thereof.

**SHEEP.** Any person who shall feloniously drive away, or feloniously steal any sheep or lamb; or wilfully kill any sheep or lamb, with a felonious intent to steal the carcass or any part thereof; or assist or aid in committing any of the said offences, shall be guilty of felony without benefit of clergy.

Any person who shall apprehend and prosecute to conviction any such offender, shall have a reward of 10*l*; for which purpose, he shall have a certificate signed by the judge, before the end of the assizes, certifying such conviction, and where the offence was committed, and that the offender was apprehended and prosecuted by the person claiming the reward; and if more than one claim it, he shall therein appoint what share shall be paid to each claimant. And on tendering such certificate to the sheriff, he shall pay the same within a month, without deduction, or forfeit double with treble costs. To be allowed in his accounts, or be repaid him out of the treasury.

And any person who shall in the night-time, maliciously and wilfully maim, wound, or otherwise hurt any sheep, whereby the same is not killed, shall forfeit to the party grieved treble damages, by action of trespass, or on the case.

And by 28 *G. 3. c. 38.* every person who shall export any live sheep or lambs, shall forfeit 3*l*. for every sheep or lamb, and shall also suffer solitary imprisonment for three months, without bail, and until the forfeiture be paid; but not to exceed twelve months for such non-payment; and for every subsequent offence 5*l*. a piece, and imprisonment for six months, and until the forfeiture be paid; but not to exceed two years for the non-payment thereof. And all ships and vessels employed therein shall be forfeited.

**SHERIFF.** As keeper of the king's peace, the sheriff is the first man in the county, and superior in rank to any nobleman therein, during his office. He may apprehend and commit to prison all persons who break the peace, or attempt to break it, and may bind any one in a recognisance to keep the king's peace. He may, and is bound *ex officio* to pursue and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for the safe custody. He is also to defend his country against any of the king's enemies, when they come into the land: and for this purpose, as well as for



keeping the peace and pursuing felons, he may command all the people of his county to attend him ; which is called the *posse comitatus*, or power of the county ; which summons, every person above fifteen years of age, and under the degree of a peer, is bound to attend upon warning, on pain of fine and imprisonment. Yet he cannot exercise the office of a justice of the peace, for then this inconvenience would arise, that he should command himself to execute his own precepts.

The sheriff hath a jurisdiction both in criminal and civil cases ; and therefore he has two courts, his *torn* for criminal causes, which is the king's court ; the other is his county court, for civil causes, and this is the court of the sheriff himself.

When the new sheriff is appointed and sworn, he ought at or before the next county court, to deliver a writ of discharge to the old sheriff, who is to set over all the prisoners in the gaol, severally by their names, (together with all the writs,) precisely, by view and indenture between the two sheriffs ; wherein must be comprehended all the actions which the old sheriff has against every prisoner, though the execution are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff ; notwithstanding the letters patent of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol. But the office of the old sheriff ceases, when the writ of discharge is brought to him.

By 3 G. 1. c. 15. it shall not be lawful for any person to buy, sell, let, or take to farm, the office of under sheriff, or deputy-sheriff, or seal keeper, county clerk, shire clerk, gaoler, bailiff, or any other office pertaining to the office of high sheriff, or to contract for any of the said offices, on forfeiture of 500*l.* one moiety to his majesty, the other to such as shall sue in any court at Westminster, within two years after the offence.

Provided that nothing in this act shall hinder any high sheriff from constituting an under sheriff, or deputy sheriff, as by law he may ; nor hinder the under sheriff in any case of the high sheriff's death, when he acts as high sheriff, from constituting a deputy ; nor hinder such sheriff, or under sheriff, from receiving the lawful perquisites of his office, or for taking security for the due answering the same ; nor hinder such sheriff, or under sheriff, deputy sheriff, seal keeper, &c. from accounting to the high sheriff for all such lawful fees as shall be by them taken, nor for giving security so to do, or to hinder the high sheriff from allowing a salary to his under sheriff, &c. or other officers.

And if any sheriff shall die before the expiration of his year, or before he be superseded, the under sheriff shall nevertheless continue in his office, and execute the same in the name of the deceased, till another sheriff be appointed and sworn ; and the under sheriff shall be answerable for the execution of the office during such interval, as the high sheriff would have been ; and the security given by the under sheriff and his pledges shall stand a security to the

king, and all persons whatsoever, for the performing his office during such interval.

SHIPS. Wilfully destroying a ship with intent to prejudice the insurers; plundering a ship in distress; stealing goods of the value of 40s. from on ship board; burning or destroying any of his majesty's shipping or stores; are, by a variety of statutes, made felony without benefit of clergy.

SHIPS WRECKED. By stat. 3 *E. 1.* and 4 *E. 1. de officio coronatoris*, where a man, dog or cat, escape alive out of the ship, neither the ship, or other vessel, or any thing therein, shall be adjudged wreck.

And by stat. 17 *E. 2. de prerogativa regis*, the king shall have wreck of the sea, whales and great sturgeons, taken in the sea and elsewhere throughout the whole realm, except in places privileged by the king.

By stat. 1 *Anne, cap. 9.* captains and marines belonging to ships, wilfully destroying the same, to the prejudice of the owners and merchants, shall suffer death as felons.

The said offence committed on the high seas shall be determined in such places in the realm as shall be limited by the king's commission, according to 28 *H. 8. cap. 15.* and persons indicted for the said offence, standing mute or challenging above twenty jurors, shall suffer death, without benefit of clergy.

By stat. 12 *Anne, sess. 2. cap. 18.* it is enacted, that the sheriffs, justices of peace, mayors, bailiffs, and other head officers of cities, corporations and port-towns near the sea, and all constables, head-boroughs, tithingmen, and officers of the customs, on application to them made by and on behalf of any commander or chief officer of any ship or vessel in danger of being stranded, or run on shore, shall command the constables nearest the sea-coast, where such ship shall be in danger, to call together as many men as shall be necessary to the assistance and preservation of such ships, &c. and their cargoes.

And if there shall be any ship of war or other ship lying at anchor near the place, the officers of the customs and constables aforesaid are to demand of the superior officers of such ships assistance by their boats, and as many hands as they can spare, for the service and preservation of the ship in distress; and if such officer shall refuse such assistance, he forfeits 100*l.* to the superior officer of the ship in distress, to be recovered, with costs of suit, in any court of record, by action of debt, bill, &c. and no essoin, &c.

Such officers of customs, commanders of ships, and all others so employed in preserving such ship or cargo, shall, within thirty days after, be paid a reasonable reward for the same, by the commander master, or owner of the ship in distress, or by the merchant whose ship or goods were saved; and in default thereof, the ship or goods so saved shall remain with the officer of the customs or his deputy, till all the charges be paid, and the said officer and deputy, and the master and mariners of the ship assisting, be reasonably gratified, or good security to be given for the same.



And if any difference arise about the salvage, three neighbouring justices shall adjust the *quantum* to be paid to the persons acting therein, which shall be binding to all parties, and recoverable in an action at law in any of the king's courts of record.

And if goods are not claimed in twelve months, the chief officer of the customs of the nearest port, shall apply to three of the nearest justices, who shall put him, or some responsible person, in possession of the goods; the justices taking an account thereof in writing, signed by the said officer; and all goods not claimed within twelve months after by the right owner, shall be publicly sold, or, if perishable, presently sold; and after all charges deducted, the residue of the monies, with a fair and just account of the whole, transmitted to the exchequer, there to remain for the benefit of the owner when appearing, who on affidavit, or other proof of his property thereto, to the satisfaction of one of the barons of the coif there, shall, upon his order, receive the same out of the exchequer.

All persons entering into such ships in distress, without leave from the commander, officer of the customs, constable, headborough, &c. or molesting any one in saving the ship or goods, or when saved, shall deface the marks of the goods before the same are taken down in books, to be provided by the commander and chief officer of the customs, such person shall, within twenty days, make double satisfaction to the party grieved, at the discretion of the two next justices of peace; or in default thereof shall be sent by the said two justices to the house of correction, and there kept to hard labour for twelve months. And every commander, officer of the customs, constables, &c. may by force repel such persons who shall press on board the said ship in distress, without leave, or molest them in preserving the said ship or cargo.

All goods carried off from such ship, and found on any person, shall, on demand, be delivered to the owner, or the person shall be liable to pay treble the value of such goods, to be recovered by the owner in an action at law.

And any person making holes in the bottom, side, or in any part of the ship, or stealing any pump, or doing any thing tending to the loss of the ship, shall be guilty of felony, without benefit of clergy.

The general issue may be pleaded to any action brought for any thing done in pursuance of this act, and this act and the special matter given in evidence; and if the plaintiff be non-suit, or forbear prosecution, or discontinue, or a verdict be against him, or judgment on demurrer; the defendant is to have full costs, recoverable as if awarded by law.

This act shall be allowed in all courts to be a public act, and all judges and justices to take notice thereof without special pleading the same.

If any officer of the customs, or his deputy, abuse the trust reposed in him, and shall be legally convicted thereof, he shall forfeit treble damages to the party grieved, to be recovered by

action of debt in a court of record, and be incapable of any employment in the customs.

This act to be read four times every year in all parish churches and chapels in sea-port towns, on the Sundays next before Christmas-day, Lady-day, Midsummer-day, and Michaelmas-day, after the prayers, and before the sermon.

This act shall not deprive the crown, or any grantee, of any right or claim to any wreck or goods that shall be jetsom, flotsom, or lagan.

This act was to continue for three years, from 1 Aug. 1714, and thence to the end of the next sessions of parliament.

By stat. 4 *G. 1. cap. 12.* the said act, and all the clauses therein, are made perpetual; and it is further enacted, that 12 *Anne, cap. 18.* shall not any ways affect the ancient jurisdiction and usage of the admiralty court of the cinque ports, or the officers thereto belonging; but the proper officers of the said court shall put the said act in execution within the jurisdiction of the cinque ports, in as full and ample manner as any other persons are by the said act appointed to do in any other parts of this kingdom.

If any owner or captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn, or otherwise destroy the ship of which he is owner, or to which he belongs, or in any manner of wise direct or procure the same to be done, to the prejudice of any persons who shall underwrite any policy of insurance thereon, or of any merchant who shall load goods thereon, he shall suffer death.

By stat. 5 *G. 1. cap. 11.* all goods, &c. which shall be salvaged out of any ship forced on shore, or stranded, (not being wrecked goods) shall after salvage and other charges paid, be liable to like customs, drawbacks, and allowances, as such goods, &c. would be liable to in case they were regularly imported.

See the 9 *G. 2. cap. 15.* for more equal paying and better collecting certain small sums for relief of shipwrecked mariners, &c. at Cadiz and Port St. Mary's in Spain.

**SHROUD.** Stealing a shroud from a dead body, is felony; for the property thereof remains in the executor, or the person who was at the charge of the funeral. But stealing the corpse only, which has no owner, is not felony, unless some of the grave clothes be stolen with it.

**SHRUBS.** Wilfully to spoil or destroy any trees, roots, shrubs, or plants, is for the two first offences, liable to pecuniary penalties; and for the third, the offender is guilty of felony, and transported for seven years. And stealing any of them by night, to the value of 5*s.* is felony for the first offence.

**SHOEMAKERS.** By stat. 9 *G. 1. cap. 27.* if any journeyman shoemaker, or other persons hired as such within the bills of mortality, be accused by the master employing him, of fraudulently purloining, embezzling, selling, pawning, or exchanging any boots,



shoes, slippers, cut leather, lace, lasts, or other materials for making boots or shoes, &c. not being the proper goods of the person accused, any justice of the county where, &c. on complaint on oath, may summon the party accused, or grant his warrant to apprehend him, and to bring him before the justice, who on his appearance on default thereof, may proceed to examine the fact, and either upon confession, or the oath of one credible witness, may convict the offender, and immediately award the party grieved reasonable satisfaction; and if not paid immediately, may grant his warrant to levy it by distress and sale of the offender's goods; and if no sufficient distress, then to be whipped in the parish where the offence was committed; and in case of conviction for any second or other offence, to commit the offender to the house of correction to hard labour for any time not exceeding one month, nor less than fourteen days.

Every person who shall buy, receive or take in pawn, from any journeyman shoemaker, or any hired as such, or from any other person whatsoever, any boots, shoes, &c. or materials for making them, not being the proper goods of him that sells or pawns, or offers to sell or pawn them, shall for every offence (being lawfully convicted thereof in manner aforesaid) make such reasonable recompence within two days of the fact shall be determined, as shall be awarded, or else be subject to such distress; and for want of sufficient distress, shall be liable to the like punishment as is hereby inflicted on journeymen so purloining, &c.

It shall be lawful for any two justices dwelling within the bills of mortality, on complaint upon oath, to issue their warrant for searching in the day-time the house of any person whom they shall suspect to have received, bought, or taken to pawn, any such goods so fraudulently embezzled; and on refusal, to break open any such house. Persons opposing such search shall for every offence forfeit 10*l.* to any who will inform and sue for the same within two calendar months in the courts at Westminster, by action of debt, &c. And if it shall appear by the oath of one or more witnesses, or on search of such house, that such person hath in his custody any such goods, the justices shall cause them to be restored to the owner, and oblige the party offending to make satisfaction to such owner for the damage in detaining the goods, and charges in getting the same; and the party refusing so to do, shall be subject to the like punishment as is by the said act provided to be inflicted on such journeymen, &c. so fraudulently embezzling, &c.

Any person employed by one shoemaker and retained by another before he hath finished his work, being convicted on oath before one justice, shall be sent to hard labour in the house of correction, not exceeding one month.

There lies an appeal to the next sessions, giving eight days' notice, whose determination shall be final

If any shoemaker shall make shoes or boots of insufficient leather, or sew them slight or ill, &c. he shall forfeit 3*s.* 4*d.* for every of

fence, and the full value of all wares thus made and sold. Conviction in the quarter sessions.

**SILK THROWING.** No person shall use, exercise, continue or set up the trade of a silk-thrower, unless he is or shall be apprentice to that trade, or have served seven years' apprenticeship thereto, upon pain to forfeit 40s. for every month; one moiety to the king, the other moiety to the prosecutor, by action of debt, bill, plaint or information, or by other lawful means (*inter alios*) before the justices of peace at their quarter sessions.

If any silk-winder or doubler, embezzle, pawn, or detain any silk delivered to them to wind or double, every winder or journeyman so offending, and the buyers and receivers thereof, being convicted by confession, or the oath of one witness before any justice of peace of the county or liberty; or if within a town corporate, before the chief officer of the same, who may hear and determine, and give the party damnified such satisfaction for their loss, damage, and charges, as they shall order, so as no more be awarded than the party is damnified, and hath expended in looking after it. And if the party be not able, or do not make recompence in fourteen days after conviction, he shall, for the first offence, be apprehended and whipped, or set in the stocks in the place where the offence was committed, or some market-town of that county near thereunto; and for the second offence shall be punished as before.

By the stat. 8 and 9 *W. 3. cap. 36.* the clause above extends to all persons who shall embezzle silk, or pawn, sell, or detain it; being delivered to any one who manufactures it, their agents, journeymen, warpers, or winders.

The receivers and buyers of silk embezzled, knowing it to be so, shall be subject to the like punishment as the person embezzling.

Any freeman of the company of silk-throwers may set on work any native subjects of his majesty's, whether men, women, or children, to turn the mill-work, tie threads, double silk, and wind silk, as formerly, although they have not served as apprentices to that trade by seven years.

Upon a *certiorari* directed to the lord mayor of London, for all orders by him made against one B. he returned that by virtue of the statute of 13 and 14 *Car. 2. cap. 15.* for the regulating the trade of silk-throwing, he had convicted B. for buying silk of the winder, upon the oath of the seller, and had adjudged B. to pay the value to the owner, and his charges: exception was taken, that the seller was *particeps criminis*, and so no competent witness. 2. That judgment ought to be given against the seller, for the act makes him an offender also; but these were both disallowed, and the return ruled to be good.

**SIMONY**, is the corrupt presentation of any one to an ecclesiastical benefice, for money, gift, reward, or benefit. It was not an offence punishable in a criminal way at the common law, it being thought sufficient to leave the clerk to ecclesiastical censures. But as these did not affect the simoniacal patron, none were



efficacious enough to repel the notorious practice of the thing, divers acts of parliament have been made to restrain it by means of civil forfeitures ; which the modern prevailing usage with regard to spiritual preferments, call aloud to put in execution.

By one of the canons of 1603, every person, before his admission to any ecclesiastical promotion, shall, before the ordinary, take an oath, that he hath made no simoniacal contract, promise, or payment, directly, or indirectly, by himself or any other, for the obtaining of the said promotion ; and that he will not afterwards perform or satisfy any such kind of payment, contract or promise, by any other without his knowledge or consent.

To purchase a presentation, the living being actually vacant, is open and notorious simony ; this being expressly in the face of the statute.

The sale of an advowson, during a vacancy, is not within the statute simony, as the sale of the next presentation is : but it is void by the common law.

A bond of resignation, is a bond given by the person intended to be presented to a benefice, with condition to resign the same ; and is special or general. The condition of a special one, is to resign the benefice in favour of some certain person, as a son, kinsman, or friend of the patron, when he shall be capable of taking the same. By a general bond, the incumbent is bound to resign on the request of the patron.

A bond with condition to resign within three months after being requested, to the intent that the patron might present his son when he should be capable, was held good ; and the judgment was affirmed in the exchequer chamber : for that a man may without any colour of simony bind himself for good reasons ; as if he take a second benefice, or if he be non-resident, or that the patron present his son, to resign ; but if the condition had been to let the patron have a lease of the glebe or tithes, or to pay a sum of money, it had been simoniacal.

**SLAVERY.** The law of England abhors, and will not endure the existence of slavery within this nation.

**SMUGGLERS.** By stat. 8 *Geo. I. cap. 18.* any persons found passing knowingly with any foreign goods landed without due entry and payment of the duties, from any of the coasts, or within twenty miles thereof, and shall be more than five in company, or shall carry any offensive weapons, or wear any mask or disguise when passing with such goods, or shall forcibly resist any officer of the customs or excise in seizing run goods, shall be guilty of felony, and be transported for seven years ; and if he return before that time, it is felony without benefit of clergy.

And all persons receiving or buying any goods, wares, or merchandizes, clandestinely run or imported, before the same shall have been legally condemned, knowing the same to be so clandestinely run or imported, being convicted on the oath of one or more credible witnesses, or confession before one justice of peace, shall for-

feit 20*l.* to be levied by distress and sale, &c. And for want of distress, shall be committed to prison, without bail or mainprize, for three months; the one moiety of the above penalty to the informer, the other to the poor of the parish where the offence was committed.

All seizures of vessels or boats of fifteen tons, or under, which shall be made after the 25th of March, 1722, by virtue of the act 1 *Anne*, cap. 7. for granting to her majesty new duties of excise, &c. and of an act for continuing several impositions, &c. to raise money by loan for the service of the year 1710, or any other act relating to the revenue of customs for carrying uncustomed or prohibited goods from ships inwards, or for relanding certificate or debenture goods from ships outward bound; and all seizures of horses or other cattle, or carriages whatsoever, for being used in the removing, carriage, or conveyance of such goods, contrary to the said acts, are to be examined into, proceeded upon, heard, adjudged, and determined by two or more justices of peace, residing near the place where such seizure shall be made, whose judgment shall be final, and not liable to appeal or *certiorari*.

Any two justices for London and Westminster shall have the like power in determining such seizures as shall be made within those cities as any two justices of any other county or place have.

This act to continue for two years, commencing from the 28th of March, 1722, and from thence to the end of the next sessions of parliament.

By 6 *Geo.* 2. when any officer of the customs shall neglect to seize and prosecute any vessel, horses, or carriage, which shall be forfeited for running of brandy, such officer being convicted upon the oath of one witness, before one justice of the peace, shall forfeit for every neglect 50*l.* one moiety to the king, and the other to the informer, to be levied by distress and sale of the offender's goods, by warrant of such justice; and for want of such distress, such offender shall be committed to prison for six months.

By the 9 *Geo.* 2. cap. 35. intituled, An act for indemnifying persons who have been guilty of offences against the laws made for securing the revenues of customs and excise, and for enforcing those laws for the future, it is enacted, That all his majesty's subjects, their heirs, &c. who before 27th April, 1736, have incurred any penalty by clandestine running of goods, &c. making false entries of goods, or abusing officers, &c. shall be indemnified, and may plead the said act for their discharge, paying only 1*s.* 4*d.* for entering the plea, provided that they stop all proceedings brought against officers, or their assistants, for or concerning any matter, cause, or thing committed by such officer, or his assistant, on occasion of any offences, &c. intended by the said act to be released and discharged; and in case any person shall claim the benefit of this act, and shall afterwards bring any action against an officer, &c. such officer, &c. shall be discharged, may plead the general issue, &c. and may recover costs against such plaintiff.



All persons taking, or being entitled to, the benefit of the said act, and shall be afterwards guilty of the like offences, shall be liable to be prosecuted for both the former and new offence, and for smuggling bonds, &c. the act is not to discharge any judgment for monies actually levied, nor the informer's part of the penalty; and all persons liable to be transported for any such offences, committing the like after claiming the benefit of the said act, shall suffer death as a felon, without the benefit of clergy; and all persons neglecting to pay composition money (before agreed to be paid) shall be excluded from the benefit of the said act.

Excepted out of the said act all seizures of goods, vessels, &c. money due on entry of goods, or bond, debentures fraudulently obtained, and actions depending; and the treasury may compound in cases where judgment was given for his majesty on the 11th of May, 1736, relating to debentures, &c.

That from and after the 24th of June, 1736, upon information upon oath before any one or more justices of the peace, that three or more persons are or have been, after the said 24th of June, 1736, assembled together for any the purposes aforesaid, and are or have been armed with fire-arms, or other offensive weapons, may grant a warrant for apprehending them, and may (if upon due examination he or they may find cause) commit them to the next county gaol, there to remain, without bail or mainprize, until discharged by due course of law; and upon conviction of their being assembled to assist in the running of goods, they shall be transported for seven years, as other felons, by the acts of 4 and 6 *Geo.* 1. and returning before the expiration of such term, shall suffer death as felons without the benefit of clergy.

Any person apprehending any other person guilty of any of the last mentioned offences, shall have a reward of 50*l.* and the like sum of 50*l.* shall be paid to any person maimed in the apprehending; and if any one is killed, his executors shall have 50*l.* and offender discovering two or more accomplices within three months after the offence committed, to the commissioners of the customs, shall himself be discharged, and shall be entitled to the like reward of 50*l.*

That from and after the said 24th of June, 1736, if two or more persons are found passing together within five miles of the sea, or a navigable river, with horse, carts, &c. whereon shall be laden six pound-weight of tea, or five gallons of brandy, or other spirits, &c. not having paid the duty, and bearing offensive arms, or being masked, &c. shall be deemed runners of foreign goods within the meaning of the act of 8 *Geo.* 1. and the proof of the entry and payment of the duties shall lie on the persons found with the goods; such persons, upon conviction, shall be adjudged guilty of felony, and be transported for seven years; and returning before the expiration of the term, shall suffer death without the benefit of the clergy.

All goods, weapons, cattle, and package of goods, &c. so found, shall be forfeited and lost.

The 50*l.* reward to persons wounded in apprehending, and to the executors of persons killed, and to the discoverers of their accomplices, are to be paid by the respective receivers general, by order of the commissioners, on certificate of the judge of the offender's conviction; and the commissioners shall adjust each person's share in case of difference.

Upon information on oath before one or more justices of the peace, that persons are lurking within five miles of the sea, or navigable river, and there is reason to suspect that they wait with intent to be aiding and assisting in the running, landing, or carrying away any prohibited or uncustomed goods, may grant a warrant for apprehending them; and they not giving a satisfactory account, may be sent to the house of correction, and be whipped, and kept to hard labour for any time not exceeding one month, and the commissioners shall pay 20*s.* to the informer for every offender so taken as aforesaid; yet persons so apprehended, desiring time to clear themselves of the accusation, shall only be committed to prison till satisfaction or security be given not to be guilty of the like offences again.

That after the said 24th of June, 1736, persons offering tea, brandy, &c. to sale, with or without a permit, may be stopped on suspicion; and the person stopping the same may prosecute in his own name, and on recovery shall be entitled to a third part of the produce on sale; and the commissioners shall advance 1*s.* per pound for tea, and 1*s.* per gallon of brandy so seized, to the prosecutor till sale.

That after the said 24th June, 1736, all watermen, carmen, porters, and other persons whatsoever, found with prohibited or run goods, knowing the same to be prohibited or run, being lawfully convicted on the oath of one or more credible witnesses, or by confession before one or more justices of the peace, where the offence shall be committed, or the goods found, shall forfeit treble the value, half to the informer, and half to the poor, where, &c. to be levied by distress and sale of the offender's goods, by warrant from the justice or justices before whom such offender shall be convicted; and for want of distress, the offender to be committed to the house of correction, there to be whipped, and kept to hard labour for any time not exceeding three months.

Vessels arriving from foreign parts with six pounds of tea on board, or brandy, &c. in a cask under sixty gallons. (except for the use of the seamen, not exceeding two gallons a man,) hovering within a league of the shore, all such goods, with the package, shall be forfeited.

After 29th Sept. 1736, foreign goods taken in or put out of any vessel within four leagues of the English coasts, without payment of customs, (unless in case of apparent necessity,) shall be forfeited, and the master, &c. shall forfeit treble the value; and the vessel, if not above 100 tons, shall be forfeited; and persons offering to bribe an officer to connivance, shall forfeit 50*l.* the forfeitures one half to



the king, the other to the informer, who shall prosecute in any of the courts at Westminster; and actions, &c. for assault upon officers, may be tried in any county of England.

All goods found concealed after the master's report at the custom-house shall be forfeited, and the master shall forfeit treble the value; and persons forcibly obstructing or wounding officers on board in the execution of their offices, shall, on conviction, be transported, not exceeding seven years, and upon returning before the expiration of the time, shall suffer death as a felon, without the benefit of the clergy.

Officers may go on board coasting vessels, and search for prohibited and uncustomed goods, and may continue on board during the vessel's stay in the port; and persons obstructing such officers forfeit 100*l.* and likewise 100*l.* penalty is laid on alehouse-men, &c. knowingly harbouring any person against whom process hath issued for obstructing officers, &c. but no forfeiture herein, unless public notice shall have been first given, in two successive Gazettes, of such person's absconding, and a writing fixed to the door of the church.

Sheriffs, mayors, &c. on request in writing of a known solicitor for the customs or excise, to grant special warrants for apprehending offenders, and the persons granting such warrants shall be saved harmless from all escapes.

In trials of seizures, judges are to proceed according to the merits of the cause, without inquiring into the fact or form of making the seizure; and officers and their assistants may oppose force to force, and when carried before a justice for wounding or killing any person, in such cases shall be admitted to bail.

The said act shall not indemnify any person prosecuted by the East India company.

Any person sued for any thing done in pursuance of the said act, may plead the general issue, and give the special matter in evidence; and if found for him, shall have treble costs.

Provided, that nothing in the said act shall extend to restrain his majesty's court of king's bench, or any of the judges thereof, or the court of justiciary in Scotland, from bailing any person committed for felony by virtue of the said act, in such manner as they may by law do in other cases of felony.

By 19 *Geo. 2.* reciting that divers dissolute persons associated themselves to support one another, and appeared in gangs, carrying fire-arms, and have been aiding in running prohibited goods, or liable to duties, or in the illegal landing of goods which have been shipped or exported upon debenture or certificate, or in rescuing the same after seizure, or in obstructing the officers of the revenue in their office, and that several officers had been killed, &c. by the said dissolute persons, it is enacted, that if any, to the number of three or more, armed with fire-arms, or other offensive weapons, shall, after the 24th day of July, 1746, be assembled in order to be aiding in the illegal exportation of wool, or other goods prohibited

to be exported, or the carrying of wool or such other goods to exportation, or in the running or carrying away prohibited goods, or liable to pay duties which have not been paid or secured; or in the illegal relanding of any goods which have been exported upon debenture or certificate; or in rescuing the same after seizure from any officer of his majesty's revenues, or other person or persons employed by him or them; or in rescuing any person who shall be apprehended for any of the offences made felony by this or any other act; or in preventing the apprehending any person who shall be guilty; or in case any persons, to the number of three or more, so armed, shall after the said 24th day of July be so aiding; or if any person shall after the said 24th of July have his face blacked, or wear any vizard, or other disguise, when passing with such goods, or shall forcibly resist any of the officers in the seizing such goods; or if any person, after the said 24th July, shall maim or dangerously wound any officer of the revenue in attempting to go on board any vessel within any port of this kingdom, or shoot, or maim, or dangerously wound him when in such vessel, and in his office; every person so offending, and convicted, shall be adjudged guilty of felony, and suffer death without benefit of clergy; and every person who shall at any time be convicted of any of the said offences in Scotland, shall suffer death and confiscation of moveables.

If any person shall be charged of any of the offences aforesaid before one or more of his majesty's justices of peace, or of the king's bench, if committed in England; or before the lord justice general, or one of the lords of the justiciary, or any one or more of his majesty's justices of the peace in Scotland, if the offence in Scotland, by information of one or more credible person upon oath subscribed, such justice of the peace, &c. before whom made shall forthwith certify under his hand and seal, and return such information to one of the principal secretaries of state of his majesty, his heirs or successors, who is to lay the same before his majesty, his heirs, &c. in privy council; whereupon it shall be lawful for his majesty, his heirs, &c. to make an order, thereby commanding such offender, &c. to surrender within forty days after the first publication in the Gazette, to the lord chief justice, or any justice of B. R. or to any one justice of peace, if the offence in England, or to any of the lords of justiciary, or to any justice of peace in Scotland, if the offence there, who is required upon such surrender to commit him or them without bail, &c. to the county gaol or prison of the place where the surrender is, that he may be forthcoming to answer; which order the clerks of the privy council shall cause to be printed in the two successive Gazettes, and to be sent to the sheriff of the county where the offence was, who shall, within fourteen days after the receipt, cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market-places, upon two market-days, in two market-towns, near to the place where the offence was committed, and shall be fixed in some public place in the said



towns; and in case such offender, &c. shall not so surrender, he escaping after such surrender, shall from the day appointed to surrender be adjudged to be convicted of felony, and shall suffer death as if attainted by verdict and judgment, without benefit of clergy, if the offence is in England; and shall be adjudged to be convicted of a capital crime, and suffer death and confiscation, as in case of a person found guilty of a capital crime, and under sentence, if the offence be in Scotland; and the court of B. R. or the justices of oyer and terminer for the county or place where such person is, may award execution against such offender, &c. in such manner as if he, &c. had been convicted in B. R. or before justices of oyer and terminer, if the offence be in England; and the justiciary, or the lords of justiciary in their circuits, may award execution against such offender, &c. in such manner as if found guilty and condemned in the same court of justiciary, or in the circuit.

Every person who (after the time appointed for surrendering) harbours or succours such person, knowing him to be so charged, and to have been required to surrender, and who has not, *being* prosecuted for the same within one year after the offence, and lawfully convicted thereof, shall be guilty of felony, and shall be transported for seven years, according to 4 *Geo. I.* and 6 *Geo. I.* and if such offender shall return into Great Britain or Ireland before the said term, he shall suffer as a felon, without benefit of clergy.

Nothing therein shall prevent any judge or justice, or any magistrate or minister of justice whatever, from securing such offender against whom information shall be made, and such order in council shall be made by the ordinary course of law; and in case such offender, &c. shall be taken, in order to be brought to justice, before the time required to surrender, in such case no proceeding shall be had upon such order, but he shall be brought to trial by due course of law.

Every offence by this or any other act relating to the revenue shall be determined in any county in England, as if the fact had been committed therein: provided that no attainder for any offence by this act shall make any corruption of blood, loss of dower, or forfeiture of lands, &c. That if any officer, &c. or other person employed in seizing wool, or other goods, not having paid or secured the duty, shall be beat, wounded, maimed, or killed by any offender against this act, or if the said wool, &c. be rescued by persons armed as aforesaid, the inhabitants of every rape or lath, or hundred in England, shall make full amends for such beating, &c. and for such loss of goods, and shall pay 100*l.* for each person killed, to his executors or administrators; and such officers, their executors, &c. are enabled to sue and recover the same; the sum for beating, &c. not to exceed 40*l.* The sum raised for that purpose to be proportionably assessed on the inhabitants of such rape, &c. for the damages and expenses in recovering the same, in such manner as damages and costs are raised in hundreds in cases of rob-

beries, and for paying the expenses according to 8 *Geo. 2.* If the plaintiff be nonsuited, the charges of the defence, &c. to be levied as the said act directs; and every action shall be prosecuted in the same manner as the said 8 *Geo. 2.* directs.

No person to recover unless notice be given of the offence four days after the commission of it unto two inhabitants of some town, &c. near the place where the fact was done; and shall, within eight days after such fact, declare on oath, before some justice of the peace of the county, &c. where the same was committed; which examination every justice shall be obliged to take, whether he or they so examined do know the person, &c. who committed such fact, or any of them; and if it be declared that he or they knew the person, &c. who committed the same, or any of them, then he or they shall be bound by recognisance to prosecute according to law; and no such person or persons shall recover damages by virtue of this act, unless he or they, besides the said notice and recognisance, give such notice, and enter into such recognisance, as persons robbed are by the said 8 *Geo. 2.* directed to give and enter into.

Provided, that where any offender shall be apprehended and convicted of such offence within six months after the offence, no hundred, &c. or inhabitant thereof shall make any satisfaction for such damages, or pay the said 100*l.* to the executors, &c. of such killed person.

No action to be brought against the inhabitants of any hundred, &c. unless the same shall be commenced within one year after the offence committed.

All persons who shall apprehend, or discover, so as he may be taken, any person in England so advertised, who shall not have surrendered within forty days, and cause him to be brought before the chief justice of B. R. or any one of the justices of the said court, or any justice of the peace for London or Middlesex, (who is hereby required to commit such person to Newgate for such felony,) shall have for every such person who shall be so apprehended 500*l.* to be paid in one month after execution shall be awarded against such offender, by the commissioners of the customs or excise respectively, who are required to receive the applications of such who are concerned, and to determine who are entitled to the said reward and shares thereof, and to divide the same as they the said commissioners, or the major part of them, shall think reasonable. And if any offender, against whom no order of council shall have been made, shall himself discover any other offender against whom such order shall have been made, he shall be discharged of his own offence, (if no prosecution commenced,) and shall have his share of the reward. And if any person lose a limb or an eye, or be otherwise maimed, &c. in apprehending or making pursuit after such offender, every such person shall receive 50*l.* over and above any other reward he may be entitled to by this act. And if any person, &c. shall be killed in the taking or pursuing, &c. then the executors, &c. of such person,



&c. shall have 100*l*. All which rewards to be paid by the receiver-general of the customs or cashier of the excise.

If any of the said offender or offenders in England shall, before his majesty's order in council shall be made, discover two or more accomplices to the commissioners, &c. and apprehend them, or cause them so to be, so as they, or two of them at least, be brought to justice and convicted, the offender or offenders so discovering shall have 50*l*. and every person, &c. so discovering shall be clear of his or their offence, for which no prosecution shall have been commenced, to be paid as aforesaid. Provided, that nothing in this act shall restrain B. R. or any of the judges thereof, or the court of judicary of Scotland, or any of the judges thereof, from bailing any person committed on this act, and not convicted or attainted, in such manner as they may do by law in other cases of felony.

Persons guilty of any of the above offences, against whom no prosecution shall have been commenced, or composition made, before the said 24th June, shall be acquitted on the following terms, viz. that he do, before 29th Sept. 1746, enter into his majesty's fleet, and serve as a sailor for one year, and before such time register his name, employment, and place of abode, with the clerk of the peace of, &c. in a book, which the said clerk is to keep among the records of the sessions for the said county, &c. and shall sign such register, signifying that he claims the benefit of this act, and that he has entered himself with a commission officer, by name, of his majesty's fleet, to serve as a sailor.

For which entry shall be paid to the clerk of the peace 1*s*. And the clerk of the peace is, immediately after the 29th Sept. to transmit to the said commissioners an exact account of the persons who have by such entry entitled themselves to the benefit of this act.

Persons who shall claim the benefit of this act, and shall afterwards commit the like offences, or shall within the said year procure their discharge, shall be subject to be prosecuted not only for the new offence, but also be liable to the pains they would have incurred in case the above indemnity had not been given.

If any officer of his majesty's navy by any means suffer such person to avoid the service, such person shall lose the benefit of the act, and the officer forfeit 500*l*.

In case any information shall be brought to trial on account of the seizure of any ship as forfeited for illegally carrying goods, or of any wool, goods, wares, or merchandizes, as uncustomed, or illegally carried or exported, or intended so to be, or as illegally reloaded after having been shipped or exported upon debenture or certificate, wherein a verdict shall be found for the claimer thereof, and it shall appear a probable cause of seizure, the judge or court shall certify the same on the record, and the defendant shall not be entitled to costs, nor shall the person who seized the same be liable to any action, &c. And in case any shall be commenced wherein a verdict shall be given for the defendant, the court or judge shall

certify on the said record, that there was a probable cause for such seizure, then the plaintiff, besides his ship and goods, or the value thereof, shall not have above 2*d.* damages, nor any costs of suit, nor shall the defendant be fined above 1*s.* The said act to continue seven years.

**SOCCAGE**, a tenure of lands by or for certain inferior services of husbandry to be performed to the lord of the fee. This was a tenure of so large an extent, that all the lands in England which were not held in knight's service were held in soccage.

**SOLDIERS.** By 43 *Eliz. cap. 3.* the quarter sessions are to charge every parish towards a weekly relief of maimed soldiers and mariners, so as no parish pay weekly above 10*d.* nor under 2*d.* nor any county which consists of above fifty parishes pay above 6*d.* one parish with another.

And by the same statute, upon a certificate under the hand and seal of the chief commander or captain, under whom a soldier or mariner served, a quarterly pension is to be allowed him till revoked or altered; he who hath not borne office not to exceed 10*l.* an officer under a lieutenant 15*l.* a lieutenant 20*l.*

A person commanded to muster absenting himself without lawful excuse, or not bringing his best arms, is to suffer ten days' imprisonment, unless he agrees to pay 40*l.* to be estreated into the exchequer, by stat. 4 and 5 *P. and M. cap. 3.*

And by the same statute, any person authorized to muster or levy soldiers, exacting or taking any reward to discharge or spare any from the service, forfeits ten times so much as he shall exact or take; one moiety to the crown, the other to the prosecutor.

Thus stood the old law; but this is now of little use since the revolution in 1688, that the right to the crown became disputable; by some it has been thought advisable, by consent of parliament, to keep up a standing army, and to that end several acts of parliament have from time to time been made for punishing mutiny and desertion, and for the better payment of the army and their quarters; which being all much the same, I shall here give you a short abstract of the last, which was passed *anno 13 Geo. 2.* in alphabetical order.

All justices within their several counties, &c. upon order from his majesty, or the general of the forces, or the master general, or lieutenant general of the ordnance, are to issue out warrants to the constables, &c. to make provision of carriages, with able men to drive the same, &c. for the forces in their marches (allowing sufficient time) that the neighbouring parts bear not always the burden; and the officers are to pay down in hand to the constable 1*s.* per mile for every waggon that travels with five horses; 1*s.* per mile for every wain with six oxen, or four oxen and two horses; 9*d.* per mile for every cart with four horses; and so proportionably for lesser carriages; and the constables may appoint such persons as they shall think proper to furnish such carriages; and if any military officer force any carriage to travel above one day's journey,



and do not discharge the same in due time, &c. or suffer any to ride therein, (except such as are sick,) or force any constable, &c. by threats, to provide any saddle horses, or force horses from their owners, he shall forfeit 5*l.* on proof before two justices, to be deducted out of his pay.

Constables, &c. not executing such warrants, or any other person hindering the execution thereof, are to forfeit not exceeding 40*s.* nor less than 20*s.* to the poor of the parish; to be determined by two justices of the peace, and levied by distress and sale.

The treasurers of the county are to pay the constables all reasonable sums laid out for carriages above what ought to have been paid by the officer out of the public stock, according to the justices directions, regard being always had to the season of the year, and length and condition of the ways; and if the public stock be not sufficient, the justices are to raise money in the same manner as for county gaols and bridges, to satisfy the extraordinary charge.

No waggon, &c. shall be obliged to carry above twenty hundred weight, by virtue of this act.

Carriages for the service of the forces quartered or marching in Scotland, are to be provided and paid at the rates, and in such manner, as by the laws in force in Scotland at the time of the union.

Persons refusing to provide carriages for the king for money tendered, or for refusing to appear, on the constable's oath, or two witnesses, forfeit 40*s.* to be levied by distress or sale.

Upon notice from the high admiral, or two principal officers, commissioners of the navy, master or lieutenant of the ordnance, of what carriages are required for the king, justices are to issue warrants not twelve miles from the place of landing, to send sufficient carriages, at 1*s.* a mile for every ton of timber, and 8*d.* a mile for all other provisions.

Constables may take up any man suspected to be a deserter, and bring him before a justice; and if upon examination, &c. it shall be found that he is a listed soldier, and ought to be with his troop or company, the justice shall cause him to be conveyed to the county gaol, and transmit an account thereof to the secretary at war, that he may be proceeded against according to law.

And to encourage any person to secure deserters, the justice is to issue his warrant to the collector of the land-tax money for payment of 20*s.* for every such deserter, to the person who secured him, out of the money arising or to arise in the year 1740.

Persons concealing any deserter shall forfeit 5*l.* And those who shall buy or receive from any soldier or deserter any arms, clothes, furniture, &c. belonging to the king, or shall change the colour of such clothes, are to forfeit 5*l.* to be levied by distress; one moiety of either penalty to be paid to the informer, and the other to the officer to whom such soldier did belong; and if any person convicted of harbouring any deserter in Ireland, or of having there re-

ceived any arms, clothes, &c. belonging to the king, shall not have sufficient to pay the penalties in four days, the justice may commit him to the common gaol, or cause him to be publicly whipped.

No officer may break open any house to search for deserters without warrant from one or more justices, on forfeiture of 20*l*.

Deserting beyond sea, and coming into England or Ireland before he be tried by a court martial for such offence, such officer or soldier shall be tried for the same as if the said offence had been committed within this realm.

After 25th March, 1740, any person enlisting as a soldier for his majesty's land service, shall, within four days after such enlisting, be carried before the next justice of the peace, or chief magistrate of a city or town corporate, not being an officer in the army, and may declare his dissent to such enlisting before them; and on such declaration, returning the enlisting money, and paying 20*s*. for the charges expended on him, he shall be forthwith discharged in presence of the justice or chief magistrate; but if he do not within twenty-four hours return such money, he shall be deemed to be enlisted as if he had given his assent thereto before the said justice or chief magistrate. If the person declare that he voluntarily enlisted himself, the justice or chief magistrate is required forthwith to certify under his hand that such person is duly enlisted, setting forth the place of his birth, age, and calling, if known, and that the seventh and tenth articles of war, against mutiny and desertion, were read to him, and that he has taken the oath mentioned in the said articles of war; and if any person so certified as duly enlisted shall refuse to take the said oath of fidelity before such justice or chief magistrate, the officer from whom he hath received such money, as aforesaid, may detain and confine him till he shall take it; and every military officer acting contrary hereto shall incur the like penalty and forfeiture as is by this act to be inflicted on any officer for making a false muster; to be recovered in the same manner as any penalties are by this act to be recovered.

If any person shall receive the enlisting money from an officer, knowing it to be such, and shall abscond, or refuse to go before such justice or chief magistrate, in order to declare his assent or dissent, as aforesaid, he shall be deemed to be listed, and may be proceeded against as if he had taken the oath directed by the said articles of war to be taken before such justice or chief magistrate.

Offences committed against former mutiny acts may, during this act, be tried, determined, and punished by the same means as the like offences committed against this present act.

Officers and other persons employed in the train of artillery shall be subject to the penalties and punishments of this act during its continuance.

This act shall extend to Jersey and Guernsey, as to the clauses of mustering, and paying, and the penalties thereto belonging.

A captain (for reward) licensing a soldier to depart, forfeits ten times the value of the thing taken, to be divided between the king



and the prosecutor, and to be recovered before the justices in sessions.

And no person acquitted or convicted of capital crimes, violences, or offences, by the civil magistrate, shall be punished for the same by a court martial, otherwise than by cashiering.

By the stat. 13 *Geo. 1. cap. 2.* the officer, when he receives the pay of a regiment, troop, or company, must within four days give public notice to innkeepers, and before they distribute the money to the soldiers, must pay and discharge the innkeepers, &c. accounts, provided they have no more of a commission officer of horse, under the degree of a captain, for diet, small beer, hay and straw, *per diem*, than 2s.

For such commission officer of dragoons, 1s. 6d.

For a commission officer of foot, 1s.

And if he has a horse, then for that horse, 6d.

Light horsemen, diet, small beer, hay and straw, *per diem*, 1s. Dragoon, 9d.

Foot soldier, diet and small beer, *per diem*, 4d.

Officer refusing to pay the same, upon account produced, and oath made by two witnesses at next sessions, the justices may certify to the paymaster of the king's forces the sum due, who shall pay the same out of the arrears of the offender, or lose his place; and if no arrears are due, then he shall deduct it out of the next which shall be due, and the officers shall be cashiered. And where quarters are not paid as the act directs, and horse and foot are upon their march, so that no present subsistence can be remitted, in such case every officer shall make up his accounts before he leave his quarters, and give a certificate, by him signed, to the party to whom the money is due, with the name of the regiment, that it may be transmitted to the paymaster, who is immediately to pay the same.

Any person making or giving a false certificate to excuse a soldier to be absent at a muster, forfeits 50*l.* and to be cashiered, and disabled from holding any military office.

Officers making false musters, &c. and commissaries signing such muster-roll, on proof, by oath of two witnesses before a general court martial, shall be cashiered, and disabled from holding any employment, and forfeit 100*l.*

Every commissary, &c. shall give notice to the mayor, &c. where the soldiers to be mustered are quartered, who is to be present, and assist for discovering any false muster, &c. and the commissary not giving such notice, shall forfeit 50*l.* and be discharged from his office; and no muster-roll shall be allowed unless signed by the mayor, &c. But if such mayor, &c. shall not attend, or refuse to sign the roll, then the commissary may muster such regiment, &c. without incurring any penalty, and the muster-roll shall be allowed, on oath, within forty-eight hours after such muster, before a justice, and the muster-rolls shall be examined by the justice, who is to sign the same.

Next justice may commit to the house of correction persons

falsely mustering, or offering so to be, there to remain for ten days.

Lending a horse to be mustered, forfeits the horse, if his own; if not, then 20*l.* upon oath of two witnesses before the next justices; the forfeitures to be paid out of his pay or goods by a court martial.

And if he hath no goods, he shall be sent to the common gaol, without bail, for six months; this forfeiture to be paid to the informer; and if he is a soldier, shall be discharged, if he demand it: and officers mustering any person by a wrong name, knowingly, shall suffer as in case of false musters.

No muster in Westminster or Southwark, but in presence of two or more justices, not being officers of the army, under the afore-mentioned penalty, unless the justices, on forty-eight hours' notice, refuse to attend, &c. and the justices are to sign the muster-rolls, and examine the truth thereof before they sign the same.

The surgeon, or his mate, shall, within the cities of London and Westminster, and ten miles of the same, certify on oath to the muster-master, that he hath actually seen such persons as he certifies to be sick; and the commanding officer shall certify the names of such others as shall be employed in raising recruits; and if such certificate proves false, he shall suffer such penalties as those that make false musters; and the commissary is to insert in the docket annexed to the muster-roll the place where and day when taken.

By 2 *Geo. 2. cap. 2. sect. 11.* within forty-eight hours after any muster made, (where the mayor, chief magistrate, or other officer to whom notice was given to be present at such muster, shall not have attended,) to swear the commissary or muster-master, who must then produce the muster-roll to be examined by the justice, who must sign the same, if there be no objection thereunto.

Every officer or soldier in the army who shall, before the 25th of March, 1728, excite, cause, or join in a mutiny, either in or out of England, either on the land or sea, or shall refuse to obey his superior officer, or resist his superior officer in the execution of his office, or shall strike his superior officer, or draw, or offer to draw, or lift up any weapon against him, or desert, or list in any other regiment, &c. without a discharge, or shall, either upon land or sea, hold any correspondence with any rebel or enemy, or give them intelligence by letters, messages, signs, or tokens, or any manner of way, or treat, or enter into any condition with them, without license, shall suffer death, or such other punishment as by a court martial shall be inflicted.

No volunteer shall be taken out of the service by any law process, other than for a criminal matter, unless for real debt, or other just cause of action; in which case, before the taking out such process or execution, the plaintiff, or some other person in his behalf, must make affidavit before a judge of a court of record, or other court out of which the process issues, that the sum is really due,



and that the debt or damages amount to 10*l.* at least: a memorandum of which oath shall be made on the back of the process, for which no fee shall be taken. Any person arrested contrary to this act, the judge, on complaint by the party himself, or by his superior officer, may examine into it on oath, and discharge the soldier without fees, and may award costs, to be recovered as the plaintiff might have done.

Plaintiff, on notice given in writing of the cause of action, to such person, or left at his last place of residence before listing, may file a common appearance in any action to be brought for any debt, so as to entitle him to proceed thereon to judgment and outlawry, and to execution, other than against the body of him so voluntarily listed.

This act shall not exempt officers or soldiers from the ordinary process of law in criminal matters, nor extend to the militia of this kingdom or Ireland.

And no person acquitted or convicted of capital crimes, violences, or offences, by the civil magistrate, shall be punished for the same by a court martial, otherwise than by cashiering.

None shall be quartered upon persons without their consent.

During the act of 4 *Geo.* 2. constables, tithingmen, &c. and in their default, any one justice, and no others, are to quarter soldiers in inns, livery stables, alehouses, victualling-houses, and all houses selling brandy, &c. by retail, (distillers' houses and shopkeepers, whose principal dealings shall be more in other goods than in brandy, &c. and who do not permit tipping in their houses, and all private houses excepted,) but may not order more billets than there are effective soldiers. Any soldier billeted on private houses, without the owner's consent, he may have his remedy at law. Any military officer quartering soldiers otherwise than as allowed, or using any menace to the civil officers, being thereof convicted before two or more justices, by the oath of two witnesses, shall be cashiered, provided the conviction be affirmed at the next quarter sessions, and a certificate thereof transmitted to the judge advocate, who is to certify the same to the next court martial; and persons grieved may complain to the justices, and be relieved; and the justices may order so many of the soldiers to be removed as they shall see cause.

Where horse or dragoons shall be quartered, the men and horses shall be billeted in the same house, (unless in case of necessity,) but not less than one man billeted where there shall be one or two horses, nor less than two men with four horses, and in proportion for any larger number.

No justice of peace, having any military office in England, shall, during this act, be concerned in quartering soldiers under his immediate command, and all warrants executed by him concerning the same shall be void.

Officers and soldiers shall pay reasonable prices, to be appointed by the sessions, who shall set reasonable rates for all provisions in their march.

By 14 *Geo.* 2. officers and soldiers, when billeted, shall be received, and provided for with diet and small beer, paying for it out of their subsistence-money, in case the innholder furnish them with candles, vinegar, salt, small beer, or cyder, not exceeding three quarts each day, and allow the use of fire and necessaries to dress and eat their meat, giving notice to the commanding officer, and performing the same: all non-commissioned officers and soldiers shall provide their own diet, and be paid out of their subsistence, and not the innholder.

Officers taking money for excusing quartering soldiers shall be cashiered and incapacitated.

If any high constable, &c. shall receive or agree for any money or reward to excuse any person from quartering soldiers, or if any victualler shall refuse to receive them, and be thereof convicted before one or more justices, &c. by confession or oath, such constable, or other person, shall forfeit any sum not exceeding 5*l.* nor under 40*s.* to be levied by distress and sale of his goods, by a warrant of such justice, directed to any other constable of the county, &c. or any of the overseers where the offender shall dwell, to be paid to them for the use of the poor.

Any one or more justices may command the high constable, &c. to give an account in writing of the number of officers and soldiers billeted, with the street and place, &c.

An officer quartering wives, children, or servants, without the owner's consent, if a military officer, he shall be cashiered, upon proof made to the judge advocate; if a civil officer, he shall forfeit 20*s.* to the party grieved, upon proof made to the next justice of peace, to be levied by distress and sale.

This act to continue in force in Great Britain, and the dominions thereunto belonging, from the 24th of March, 1730, till the 24th of March, 1732; and within the island of Minorca and Gibraltar, from the 24th of March, 1730, till the 35th of March, 1733.

By the stat. 13 *Geo.* 1. *cap.* 2. constables, &c. may quarter soldiers of the foot guards in Westminster, &c. in such houses only as by that act are limited, (London excepted,) during the said act.

By the same act, officers or soldiers accused of capital crimes, violences, or offences, are punishable by law: on application to the commanding officer, he is to use his utmost endeavour to deliver over the accused person to the civil magistrate, and be aiding and assisting to the officers of justice in apprehending him, in order to bring him to trial; and any commanding officer refusing to deliver over an accused person, or be assisting to the officers of justice, being convicted thereof before two justices of the peace, by the oath of two witnesses, he shall be cashiered; provided the conviction be confirmed at the next quarter sessions, and a certificate transmitted to the judge advocate, who is to certify the same to the next court martial.

If a soldier come from beyond sea to the place of his birth, and



cannot get work, two justices shall take order to set him to work, or, for want thereof, shall tax the hundred for his relief.

By 5 and 6 *W. and M. cap.* 9. and 15. no person that shall be listed for the land service after the 1st of March, 1693, shall be esteemed a listed soldier, or be subject to any of the pains and penalties of that act, or any other penalty, for his behaviour as a soldier, who shall not have been brought before a justice of peace, not being an officer in the army, or chief magistrate of some city or town corporate, or high or petty constable in the hundred, &c. where the person shall be listed, and before such justice, magistrate, &c. declare his free consent to be listed as a soldier, before he be listed or mustered in any muster-roll of a regiment, troop, or company. And every military officer offending herein shall incur the like penalty as any officer is liable to for making a false muster.

But by stat. 6 and 7 *W. 3. cap.* 8. no person listed for land service after the 10th of April, 1695, shall be esteemed a listed soldier, though he declares his free consent to be listed as a soldier before a petty constable; any thing in the last recited act notwithstanding.

Disbanded soldiers may settle in any town of the county where born, and set up any trade without serving an apprenticeship, &c. by stat. 10 and 11 *W. 3. cap.* 11.

Constables, &c. may quarter soldiers of the foot guards in Westminster, &c. in such houses only as by 13 *Geo.* 2. is limited during its continuance.

Persons aggrieved by constables, &c. quartering soldiers, more than they ought to have in proportion to their neighbours, one justice, on complaint, may order so many to be removed and quartered elsewhere as he shall see cause, who is obliged to receive them.

**STAGE COACHES.** As various accidents have happened from time to time, by the negligence of the drivers, and by other causes, the legislature has subjected stage coaches, and their owners, drivers, &c. to various regulations, of which the following are now in force:

By the 50 *Geo.* 3. c. 48. the former statutes of 28 *Geo.* 3. c. 57. 30 *Geo.* 3. c. 36. and 46 *Geo.* 3. c. 136. are respectively repealed, and it is enacted that, from the passing of the said act, (9th of June, 1810.) any coach, berlin, landau, diligence, calash, chaise marine, or other carriage, with four or more wheels, by what name soever the same shall thereafter be called or known, to be employed as a public stage coach or carriage, for conveying passengers for hire to and from different places in Great Britain, and drawn by four or more horses, shall be allowed to carry ten outside passengers, and no more, exclusive of the coachman, but including the guard, where there is a guard with such coach or other carriage; and that one passenger, and no more, shall be allowed to sit upon the box with the coachman, and three of such passengers on the front of the roof,

and the remaining six behind, in the manner the most safe and convenient for the passengers; provided that no passenger shall be allowed to sit on the luggage, or that part of the roof allotted for the same; and that all stage coaches or other carriages above described, drawn by two or three horses, shall be allowed five outside passengers, and no more, exclusive of the coachman; and that all stage coaches called long coaches, or double-bodied coaches, shall be permitted to carry eight outside passengers, and no more, exclusive of the coachman, but including the guard, where there is a guard with such coach, under such fines and penalties as are by the act imposed in cases where more outside passengers are carried than are allowed by the act, such fines and penalties to be imposed and levied upon the owner or proprietor, or the owners or proprietors, of such coach or other carriage above described, or any one or more of them, or any person driving the same, in the manner after mentioned: provided that no child in the lap, or under seven years of age, shall be included in or counted as one of such number, unless there shall be more than one; and if more than one, that two of such children shall be accounted equal to one grown person, and so on in the same proportion; and that no person paying as an outside passenger shall be permitted to sit or remain as an inside passenger, unless with the consent of one of the inside passengers, at the least, conveyed by such coach or other carriage, and next to whom such outside passenger shall be placed: and provided also, that where such coach or other carriage is of a construction peculiarly wide or commodious, and being so found, shall be duly licensed for that purpose, four outside passengers, instead of three, shall be allowed to sit on the front of such coach or other carriage; provided that the number of outside passengers shall not exceed ten in all.

Provided always, that from and after March 1, 1811, it shall not be lawful for any driver, owner, or proprietor of any coach or other carriage above described, going or travelling for hire, to permit or suffer in any manner luggage to be carried on the roof of any such coach or other carriage, or any person to ride or go as an outside passenger on or about the outside of any such coach or other carriage, the top of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right, or off wheel, to the centre of the track of the left, or near wheel, under the penalty of 5*l.* for each offence, to be recovered and applied in the same manner as any penalty for more outside passengers than are allowed by this act can be recovered and applied.

From and after the passing of this act, it shall not be lawful for any driver, owner, or proprietor of any such coach, mail coach, or other carriage above described, going or travelling for hire, to carry, or permit, or suffer any parcel or luggage whatever, exceeding two feet in height, to be conveyed on the roof of any such coach, mail coach, or other carriage above described, drawn by four or more



horses ; and where carriages are drawn by two or three horses, then such luggage shall not exceed eighteen inches above the roof ; and every such driver so offending, and any owner or proprietor of any such coach or other carriage, where such driver is not known, or cannot be found, being convicted of such offence, either by confession, the view of a justice of the peace, or other magistrate, or the oath or oaths of one or more credible witness or witnesses, before any justice of the peace, or other magistrate acting in and for the county, riding, city, town, division, or place where any offence shall be committed, (which oath every such justice or other magistrate is authorized and required to administer,) shall forfeit the sum of 5*l.* for every inch above the space of two feet or of eighteen inches respectively above allowed ; and in case the driver so offending shall be the owner of such coach, mail coach, or other carriage above described, he shall forfeit the sum of 10*l.* for every inch above the spaces respectively above allowed ; and in default of payment of the said penalties respectively, the person and persons so offending shall be committed to the common gaol or house of correction of the county, riding, city, town, division, or place where such offence shall have been committed, there to remain, without bail or mainprize, for the space of two months, unless such penalties shall be sooner paid : provided that all packages before described shall be so placed on the roof of such coach, mail coach, or other carriage, as that no passenger shall sit thereon, under the penalty of 50*s.* for each offence ; to be paid by such passenger, and to be recovered and applied in the same manner as the other penalties imposed by the act ; and that the division or space on the top of the coach, or other carriage aforesaid, allotted for luggage, shall be distinctly separated from the other part of the top of such coach, or other carriage, by some railing, or otherwise ; and in case any such driver, or owner, or part owner, when required so to do, shall refuse to permit the said carriage and luggage to be measured by any justice of the peace, magistrate, constable, surveyor of any highway, or turnpike road, inspector of coaches duly authorized by the commissioners of stamps, or passenger, he shall forfeit the like penalty, to be recovered and applied in the manner herein-after specified.

By s. 5. it is recited, that whereas it was expedient to lower the present height of stage coaches, in which case a greater height of luggage than two feet might be safely permitted to be carried on the outsides thereof ; it is therefore enacted, that it shall be lawful to carry any luggage, parcel, or other package, in manner before provided for, on the roof of any coach, or other carriage above described, of a greater height than two feet ; provided such luggage, parcel, or other package, be not a greater height from the ground, including the height of such coach, than ten feet nine inches.

In every license to be taken out by any person who shall keep any carriage to be employed as a public stage coach, or other carriage

above described, for the purpose of conveying passengers for hire to and from different places in Great Britain, shall be specified the number of outside passengers to be carried on or about the outside of such coach or other carriage above described, as well as the number of inside passengers to be carried therein as now by law directed; and that no such license shall in future be granted for more than the number of inside and outside passengers in all allowed by law, and that such license shall contain the name and the place of abode of every individual to whom such coach or other carriage shall belong, a copy of which license shall be accessible at the board or office where such license is issued to any person applying either for a copy of or for the perusal of the same.

Every person who shall be duly licensed to keep any coach or other carriage above described, for the purpose of conveying passengers for hire to and from different places in Great Britain, (mail coaches always excepted,) shall, and they are respectively directed and required to paint, or cause to be painted, within six months from the passing of the act, on the outside of each such coach or other carriage, or on some other conspicuous part thereof, in legible characters of at least one inch in length, and in a different colour from the ground on which the same is painted, and in words at length, the number of outside passengers which the license obtained for such carriages respectively shall specify or express, (as well and in like manner as the number of inside passengers as now by law directed,) together with the name or names of the person or persons, or the company of proprietors or firm to whom such coach or other carriage shall belong; provided that it shall be lawful for any board of commissioners by whom such license shall be granted to require, instead of such inscription, that a plate, made of brass, or other metal, shall be fixed on the side of each coach or other carriage, with the name or names of the person or persons, or the company of proprietors or firm, and a distinct number for each, to the end that the owner and driver of such coach or carriage shall be known; and if any person, company of proprietors, or firm, shall be licensed to keep more than one coach, every one of them shall have several numbers, or other marks of distinction, in the same manner as if they did belong to several persons; and if any person shall blot out, obliterate, alter, or deface the number, figure, or mark of distinction appointed by the said commissioners, he shall forfeit 5*l.* for every such offence; and if any person or persons shall employ or make use of any such carriage as aforesaid for carrying any outside passengers for hire to and from different places in Great Britain, without being licensed so to do, or without having the said words and number and name painted on the outside of each door of such carriage, or in such other conspicuous part thereof, and in such manner as is herein-before directed, or shall at any time carry more outside passengers than shall be specified or expressed in the license for using such coach or other carriage, and by the words so painted on the outside of such doors, or other conspicuous part of such car-



riage, or the numbered plate, every person so offending shall, for each and every offence, forfeit and pay the sum of 10*l.* for each outside passenger beyond the number hereby allowed, and double that sum if the driver or coachman be also owner or part owner, to be recovered and applied in the same manner as any other penalty imposed by this act can be recovered and applied; and every such inscription or plate, as the case may be, shall be considered sufficient evidence of the parties to whom such coach or other description of carriage above enumerated doth belong, being owner or proprietor thereof.

If the driver of any such coach or other carriage, going or travelling for hire, and conveying a greater number of persons in any manner or way in the inside, or on or about the outside of any such coach or other carriage, than are allowed by the act, or permitting more than one passenger to sit on the box, (which box shall be so constructed as not conveniently to hold more than one passenger besides the coachman,) shall not be known, or being known, cannot be found, in every such case the owner or owners, proprietor or proprietors, or any of them, of any such coach or other carriage, shall be liable to all such fines and penalties as if such owner or owners, proprietor or proprietors, had been the driver only of any such coach or other carriage above described, at the time that such offence was committed: provided, that if any such owner or proprietor shall make out to the satisfaction of the justice of the peace or other magistrate above mentioned, before whom any such information shall be laid, by sufficient evidence not resting on his own testimony, that the offence was committed by the driver of the coach or other carriage, without his privity or knowledge, and that no profit, advantage, or benefit, either directly or indirectly, has accrued, or could or would have accrued to such owner or proprietor therefrom, but that such offence was committed against the act by such driver, in violation of his duty to the owner or proprietor, as well as against the provisions of the act, such justice of the peace, or other magistrate above mentioned, shall discharge the owner or proprietor from such penalty and expense, and levy the same upon the driver only, when found; and such driver, unless he pays the penalty for which he is liable in consequence of such offence, shall be committed to the common gaol or house of correction for the county, riding, city, town, division, or place where such offence shall have been committed, there to remain, without bail or mainprize, for any time not exceeding six months, nor less than three months, at the discretion of the justice or other magistrate above mentioned, by or before whom any such offender shall be convicted.

And any summons issued by any justice of the peace or other magistrate above mentioned, commanding any driver, owner, or proprietor of any coach or other carriage above described, or any person or persons, or company of proprietors, or firm of any company, to whom such coach or other carriage shall belong, to appear before him at such time or place as to such justice or other ma-

gistrate shall seem meet, for any offence committed against the act, or a copy thereof, shall be deemed to be well and sufficiently served, in case either the original or a copy of such summons be left with the known or acting book-keeper for such coach or other carriage, in any town or place into or through which any driver, offending as aforesaid, shall drive such coach or other carriage.

The driver of any such coach, mail coach, or other carriage above described, going or travelling for hire, stopping at any place where assistance can be procured, shall not quit his horses or the box of such coach or other carriage, until a proper person shall be employed to hold the horses or fore horses whilst such carriage stops, so as to prevent them from running away, and shall have actual hold of such horses, and that such person shall hold the same until the driver has returned to his box, or until the post-boy, who rides one of the horses, is again mounted, and has in his hands the reins for guiding the said horses, and if such driver or such person shall neglect so to do, being duly convicted thereof by confession, the view of a justice or other magistrate above mentioned, or by the oath of one or more credible witness or witnesses taken before any justice or other such magistrate, shall be subject to and forfeit and pay a penalty of not less than 10s. nor more than 5*l*., for each offence: provided, that nothing in this section contained shall extend to hackney coaches being drawn by two horses.

In case the driver of any such coach, mail coach, or other carriage above described, or the person acting as guard, shall, by intoxication or negligence, or other misconduct (unavoidable accidents always excepted,) endanger the safety of the passengers in their lives, their limbs, or their property, or shall not give due care or protection to any other property with which such driver or guard may be intrusted; or if any driver of any mail coach, or any guard, shall loiter on the road, or wilfully mispend or lose time, so as to retard the arrival of his Majesty's mail at the next stage; or if the driver of any mail coach shall not in all possible cases convey such mails at the speed of such a number of miles an hour as are fixed by the postmaster-general for the conveyance thereof, unless the circumstances of the weather, or the badness of the roads, or the occurrence of accident to the coach or horses, shall prevent the same; or if any driver or guard of any such coach, mail coach, or other carriage, shall not duly account to his or their employers, or persons authorized by them to account with such driver or guard, for all monies received by him, in respect of any passenger or parcel conveyed or taken by such coach or other carriage above described, then and in every such case the driver or guard (as the case may be) so offending, and being convicted thereof by his own confession, the view of a justice (in any case applicable thereto), or the oath or oaths of one or more credible witness or witnesses, before any justice or other magistrate above mentioned, shall forfeit and pay a sum not less than 5*l*. nor more than 10*l*. for every such offence, and



shall return the sum or sums of money so embezzled; and in case of non-payment, every such justice or other magistrate, are by the act authorized to commit such offender to the common gaol or house of correction for the county, riding, city, town, division, or place where such offence shall have been committed, there to remain, without bail or mainprize, for any time not exceeding six months, nor less than three months, at the discretion of such justice or other magistrate.

In case the driver or guard of any such coach or other carriage above described, shall use abusive or insulting language to any passenger, or shall insist on or exact more than the sum to which he is legally entitled, the driver or guard (as the case may be) so offending, and being convicted thereof by his own confession, or the oath or oaths of one or more credible witness or witnesses, before any justice, or other magistrate above mentioned, shall forfeit and pay a sum not less than 5s. nor more than 40s. for every such offence; and in case of non-payment, every such justice or other magistrate are by the act authorized to commit such offender to the common gaol or house of correction of the county, riding, city, town, division, or place where such offence shall have been committed, there to remain, without bail or mainprize, for any time not exceeding one month, nor less than three days, at the discretion of such justice or other magistrate.

If any constable or other peace officer, shall refuse or neglect to execute any warrant granted by any justice of the peace, or other magistrate above mentioned, pursuant to the directions of the act, every such person so offending, and being convicted thereof before one or more justice or justices of the peace, or other magistrate or magistrates, either by his confession, or upon the oath of one or more credible witness or witnesses (which oath such justice or other magistrate is authorized and required to administer), shall for every such offence forfeit and pay the sum of 5*l.*; and in case the person so convicted, doth not forthwith pay or secure to be paid the said penalty, then it shall be lawful for such justice or justices of the peace, or other magistrate or magistrates, to commit such person to the common gaol or house of correction of the county, riding, city, town, division, or place where such offence shall be committed, there to remain, without bail or mainprize, for any time not exceeding one month, unless the said penalty shall be sooner paid.

From and after the passing of the act, if the driver of any such coach or other carriage above described, drawn by two or more horses, and going or travelling for hire, shall permit or suffer more than one person on the coach-box besides himself, and a greater number of outside passengers than according to the numbers allowed by this act, to be carried or conveyed by any such coach or carriage, it shall be lawful for any outside or inside passenger, who shall have been regularly booked, and who has actually paid for his place, if conveyed by such coach or other carriage, to require the driver to stop such coach or carriage at any toll or turnpike gate,

and to require the collector of the toll at such gate to count the number of passengers, or measure or ascertain the height of the luggage upon such coach or other carriage; and if any such driver shall refuse, upon the demand of any such passenger, to stop any such coach or carriage, or to permit or suffer the collector at such toll or turnpike gate, who shall be so required by any such passenger, to count the number of passengers and ascertain the height of the luggage, or to make such examination, in every such case the driver of such coach shall forfeit the sum of 5*l.* for every such refusal, and shall, if more passengers shall have been carried on such coach, or the luggage shall exceed the height allowed by this act, forfeit for every such offence, the committing whereof shall have been prohibited as aforesaid, double the penalty imposed by this act for such offence, the one half of such penalty to belong to the toll collector for his trouble, and the other half to the passenger; and if any such toll collector, upon being so required by any such passenger, shall neglect or refuse to make such examination, he shall forfeit and pay the sum of 5*l.* for each offence, to be levied and applied in the same manner as the other penalties imposed by this act; and if any person shall endeavour to evade such examination, by descending from such coach or other carriage above described, previous to its reaching any turnpike gate, and re-ascending after it has passed such turnpike gate, he shall forfeit and pay the sum of 10*l.* to be recovered in the same manner as the other penalties hereby imposed.

From and after the passing of the act, if the coachman or person having the care of any coach, mail coach, or other carriage above described, shall permit or suffer any other person, without the consent of a proprietor, or against the consent of the passengers, to drive the same, or shall quit the box without reasonable occasion, or for a longer space of time than such occasions may require (although the reins for guiding or driving the horses be left for the time in the hands of the passenger on the box), or if the coachman or person having the care of any such coach, mail coach, or other carriage, shall, by furiously driving, or by any negligence or misconduct, overturn the carriage, or in any manner endanger the persons or property of the passengers, and the property of the owners or proprietors of such carriage (unavoidable accidents always excepted), every such coachman or person as aforesaid so offending, shall for every such offence forfeit and pay any sum not exceeding 10*l.* nor less than 5*l.* to be levied and applied in the same manner as the other penalties imposed by the act.

In all cases where any penalties and forfeitures incurred for any offence committed against this act, shall be recoverable before one or more justices of the peace, or before any other magistrate above mentioned, every such justice or other magistrate is required to administer an oath, and upon proof of any such offence, shall give judgment or sentence for the forfeiture or penalty incurred, and for the reasonable costs and charges of the prosecution; and if the same



shall not be paid, shall commit the persons so convicted, to the common gaol or house of correction for the said county, shire, borough, town corporate, or place, for any time not exceeding three months nor less than one month, at the discretion of such justice or other magistrate, unless such person shall enter into such recognizance with such surety before such justice or justices, or other magistrate as herein before mentioned.

If any such justice or other magistrate above mentioned, before whom any person shall have been convicted for any offence against the provisions of this act, shall see cause to mitigate such penalty, such justice or other magistrate may mitigate the same to any sum not exceeding one moiety, over and above all reasonable costs and charges incurred in the prosecution, and that one half either of the whole or of the moiety of such penalty with the said costs and charges, shall be paid to the informer for his own behoof, or to be at his disposal for public purposes (except in the special cases above provided for), and the other half to be paid to the trustees of the roads where such offence is committed, who are required, in consideration thereof, to direct their surveyors to watch over the due execution of the act, in the several roads to the superintendance of which they are respectively appointed.

If any person going or travelling as a guard to any coach, mail coach, or other carriage above described, shall fire off the arms he is intrusted with, either while such coach or other carriage is going on the road, or going through or standing in any town, otherwise than for the defence of such coach or other carriage, or the passenger or passengers therein, every such person shall, for every such offence, forfeit the sum of 5*l.* to be recovered and applied in the same manner as the other penalties imposed by this act.

In case any person committing any offence against the provisions of the act, for which no specific penalties shall have been provided, he shall forfeit at the discretion of one or more justices of the peace, or of any other magistrate above mentioned, any sum not exceeding 10*l.* nor less than 50*s.* upon being convicted thereof on the oath or oaths of one or more credible witness or witnesses, before any such justice or other magistrate, acting in and for the county, riding, city, town, division, or place where the offence shall have been committed, or by any other justice of the peace residing in any county, riding, city, town, division, or place in which the offender shall then actually be present, upon full and satisfactory proof being exhibited before such justice or other magistrate, on the oath of one or more credible witness or witnesses (which oath or oaths, as well such justice or other magistrate acting in and for the county, riding, city, town, division or place where the offence shall have been committed, as such justice and other magistrates as shall be resident in the county, riding, city, town, division or place where the offender shall actually be present, are authorized and required to administer); and in default of payment of the penalty which shall have been awarded on the conviction of such offender, he shall for every such offence

be committed to the common gaol or house of correction of the county, riding, city, town, division, or place where such offence shall have been committed, or of the county, riding, city, town, division, or place where he shall actually be present, (as the case may be,) there to remain, without bail or mainprize, for any time not exceeding three calendar months, nor less than five days, at the discretion of the justice or justices by or before whom such offender shall be convicted.

If any person shall receive any sum of money for conniving at any offence prohibited by the act, either for any single offence or for a number of such offences, or by stipulation or agreement by the day, the week, the year, or any other period of time, and shall be duly convicted thereof before one or more justices, or before any other magistrate above mentioned, he shall forfeit the sum of 50*l.* for each offence, and in default of the payment thereof, shall be committed to any house of correction for any period not exceeding three months nor less than one month.

And it is by the said act recited, that it would materially contribute to the safety of passengers, if a great part of the luggage usually conveyed by stage coaches, were conveyed in a much lower position than is generally the case, and the same restrictions in regard to the number of outside passengers on such stage coaches would not be so requisite, provided no luggage was carried by them, except in the manner herein after mentioned; it is therefore further enacted, that all stage coaches, (long bodied coaches included,) carrying no parcels or luggage whatsoever, excepting in the inside or in the front boot thereof, or in a boot behind or under the body of such carriage; and where the top of such boot behind, when the coach is empty, is not more than six feet from the ground, having obtained a special license for that purpose, and having the name of the owner or owners, and the number of outside and inside passengers thereby allowed, painted or inscribed thereon, shall be permitted to carry two outside passengers more than the number of outside passengers hereby limited with respect to other coaches or carriages above described, without subjecting the drivers, owners, or proprietors of such coaches or other carriages to any of the penalties, forfeitures, fines, or punishments imposed or authorized to be imposed by this act.

No prosecutions for any offence, committed against the act, shall be commenced within fourteen days after the offence shall have been committed, and that there shall be but one recovery for the same offence, except where the owner of stage coaches or other carriages above described, are required to paint their name or sign, and to preserve the same in a clear or legible state, in which case such prosecution may be commenced at any time, and any neglect in remedying the same for the space of one month shall be considered a new offence.

And it is further recited by the said act, that whereas a certain number of hackney coaches work, by permission, as stated stages,



and which, as well as other hackney coaches, were licensed by, and had been hitherto under the regulations and control of the commissioners for licensing and regulating hackney coaches, the same stated stages being numbered, and to all intents and purposes hackney coaches, yet for the public convenience were exempted from the ordinary street work of hackney coaches, and permitted to be employed and driven certain prescribed routes, at fixed hours, between the metropolis and certain villages and places in its vicinity: and that whereas the said stated hackney coach stages, as well as the hackney coaches in general, and the owners and drivers thereof, were in all respects under the regulation and control of the said commissioners for licensing and regulating hackney coaches; it is therefore further enacted, That nothing in the act contained shall extend to, or be construed to extend, to affect such hackney coaches, or their owners or drivers respectively, as are or thereafter may be licensed by the said commissioners for licensing and regulating hackney coaches, whether such coaches be so licensed to be used and driven in the ordinary and indiscriminate work of hackney coaches in general, in and about the streets and places within which such hackney coaches are by law compellable to go, or be driven, or are, or may be licensed expressly for the purpose of being employed and driven as hackney coach stages between the metropolis and certain villages and places in the vicinity thereof.

If any person shall find himself aggrieved by any determination, or conviction, and shall enter into a recognisance before the justice or other magistrate, with one sufficient surety, the condition whereof shall be, that such person shall appear before the court of the next quarter sessions for the county or other place where such determination or conviction shall have been given or made, then and there to abide the final order, judgment, and sentence of such court on the matters aforesaid; and, in every such case, such person shall be at liberty to appeal to the next general quarter sessions of the peace for the said county or other place, who, upon hearing the said appeal, have full power finally to determine the same, and to award such costs to the appellant or to the prosecutor or informer, as to such court shall seem fit; and such last mentioned proceedings, final judgment, and sentence, shall not be removable by *certiorari* or otherwise into any other court.

By the 52 *Geo.* 3. c. 93. an annual duty of 2*l.* 10*s.* is to be paid for every coachman kept for driving a stage coach, and also for every guard.

**STAMPS.** The exigencies of the state having rendered the impositions of stamp duties necessary, various acts of parliament have been passed, fixing such duties, and stating the regulations for collecting them. These duties and regulations, indeed, have undergone various changes since the time of William and Mary, by whom (5 and 6 *W.* and *M.* c. 21.) they were first imposed. The collection, &c. of these duties is placed under the superintendance of commissioners.

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In this article we shall state as briefly as possible the various articles subject to the stamp duty, together with such of the general regulations as the limits of this work will admit of being specified.

The last general stamp act, passed by parliament, is the 48 *Geo.* 3. c. 149. which divides the articles subject to the stamp duties into four great classes. This division we have followed, and have also incorporated the other stamp duties not repealed by the above mentioned statute.

Class I. *Duties on Conveyances, &c. not included in Classes II. & III.*

*Administration*, letters of, see PROBATE.

*Admission* of any advocate in any ecclesiastical or admiralty courts in England; or any court in Scotland, 40*l.*

Except where an advocate, admitted in one court shall be admitted in any other court, provided he shall have paid the proper stamp duty on his former admission.

*Admission* of any barrister at law, 50*l.*

*Admission* of an attorney, solicitor, or proctor, sworn clerk, side clerk, clerk in court, or other clerk or officer, in any court in England, whose emoluments (like those of an attorney or solicitor) shall depend upon his being retained and employed by clients or suitors, and shall therefore be wholly uncertain in amount, 20*l.*

Except persons admitted as attorneys or solicitors in one court and in another, in which cases the latter admission shall be free of duty.

Provided such attorney or solicitor shall have paid the proper stamp duty on his former admission.

But in all cases not expressly exempted, the said duty is to be paid on every admission of the same person.

*Admission* of any writer to the signet, or solicitor, agent, attorney, or procurator, in any court in Scotland; or as a clerk or officer in any court in Scotland, whose emoluments (like those of a solicitor) shall depend upon his being retained and employed by clients or suitors, and shall therefore be wholly uncertain in amount with similar exemptions to those in England, 20*l.*

Of any person to act as a solicitor, agent in the court of session, justiciary, or commission of teinds, who shall not have served an apprenticeship for five years, a further duty of 55*l.*

To act as a procurator or solicitor in the admiralty in Scotland, commissary court at Edinburgh, or any inferior court in Scotland, who shall not have served an apprenticeship for five years, a further duty of 25*l.*

*Admission* of any master in ordinary in chancery, or as one of the six clerks, or one of the cursitors in England; or as a sworn clerk, side clerk, clerk in court, or other clerk or officer whatsoever, in any court in Great Britain, who must necessarily be employed to do certain official business, and whose emoluments shall the afore be so far fixed and certain; where the emoluments shall not amount to 50*l.* per annum, 1*l.* 10*s.*

			L.	s.	d.
amounting to	50 <i>l.</i> and under	100 <i>l.</i> per annum	3	0	0
-----	100 <i>l.</i> -----	200 <i>l.</i> -----	5	0	0
-----	200 <i>l.</i> -----	300 <i>l.</i> -----	10	0	0
-----	300 <i>l.</i> -----	500 <i>l.</i> -----	20	0	0
-----	500 <i>l.</i> -----	750 <i>l.</i> -----	30	0	0
-----	750 <i>l.</i> -----	1,000 <i>l.</i> -----	40	0	0
-----	1,000 <i>l.</i> -----	1,500 <i>l.</i> -----	50	0	0
-----	1,500 <i>l.</i> -----	2,000 <i>l.</i> -----	75	0	0
-----	2,000 <i>l.</i> -----	3,000 <i>l.</i> -----	100	0	0
-----	3,000 <i>l.</i> or upwards per annum		150	0	0

The said emoluments to be estimated according to the average amount thereof for three years preceding, if practicable; and if not, according to the best information that can be obtained.

[*Exemptions.*] Every officer admitted, annually, for every admission after the first; provided the duty shall have been paid on his first admission.

All admissions charged with the duties next mentioned.

But in all cases not expressly exempted, the proper duty is to be paid on every admission of the same person.

*Admission* in either of the four inns of court, 20*l.*

*Admission* in either of the inns of chancery, 3*l.*

*Admission* of a fellow of the college of physicians, in England or Scotland, 20*l.*

*Admission* or license to exercise the faculty of physic, in London and within seven miles, 10*l.*

*Admission* or matriculation in the universities of England or Scotland, 10*s.*

*Admission* to the degree of a bachelor of arts in England if conferred in the ordinary course, 3*l.*

If conferred by grace, royal mandate, by reason of nobility, or out of the ordinary course, 5*l.*

*Admission* to any other degree, if conferred in the ordinary course, 6*l.*

Or otherwise out of the ordinary course, 10*l.*

*Admission* of any person to the degree of doctor of medicine, in either of the universities in Scotland, 10*l.*

*Admission* into any corporation or company.—Where the admission shall be in respect of birth, apprenticeship, or marriage, 1*l.*

Upon any other ground, 2*l.*

Except craftsmen or others entering into any corporation, in Scotland, if previously admitted freemen or burgesses, and the proper stamp duty paid on admission.

*Advertisement* contained in the London Gazette, or any other paper, to be dispersed and made public, weekly or oftener, or yearly, monthly, or at any other interval of time exceeding one week, or which shall be contained in or published with any pamphlet whatsoever, so printed and dispersed and made public, (By 44 Geo. 3. c. 90.) 3*s.*

Except single advertisements printed and dispersed separately,



daily accounts or bills of goods imported and exported, accounts of the weekly bills of mortality.

*Affidavit*, not made for the immediate purpose of being filed, read, or used in any court of law or equity, (48 *Geo. 3. c. 149.*) 2s. 6d.

Except affidavits authorized to be made before any justice; or before any commissioner of revenue, or officers acting under them; or commissioners appointed by act of parliament.—Affidavits made pursuant to the statute for burying in woollen. Affidavits required at the Bank, to prove the death of any proprietor, or to identify the person of such proprietor, or to remove any other impediment to the transfer of their stocks or fund. And affidavits relating to the loss, mutilation, or defacement of any bank note or bill. Also the general exemptions at the end of this schedule.

*Agreement*, or any minute or memorandum of an agreement, made in England under hand only, or in Scotland without clause of registration (and not otherwise charged nor exempted from all stamp duty) where the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter, indorsed or annexed.

Where the same shall not contain more than 1080 words being fifteen common law sheets of seventy-two words each, 16s.

And where the same shall contain more than 1080 words, 1*l.* 10s.

And for every entire quantity of 1080 words, over and above the first 1080 words, a further progressive duty of 1*l.*

But where divers letters shall be offered in evidence, to prove any agreement between the parties, it shall be sufficient, if any one of such letters shall be stamped with a duty of 1*l.* 10s. although any same shall contain twice the number of 1080 words or upwards.

*Exemptions.*] Label, slip, or memorandum of insurances, made by the Royal Exchange and London assurance offices. Memorandum or agreement for granting a lease or tack, at rack rent under 5*l.* per annum. For the hire of any labourer, artificer, manufacturer, or menial servant. Memorandum, letter, or agreement, relating to the sale of any goods, wares, or merchandize. Memorandum or agreement made between the master and mariners of any vessel, for wages, on any voyage coastwise in Great Britain. Letters containing any agreement (not before exempted) in respect of any merchandize, or evidence of such an agreement, which shall pass, by the post, between merchants or others, carrying on trade in Great Britain, and residing and actually being, at the time of sending such letters, at the distance of fifty miles from each other.

*Almanack* or calendar (by 44 *Geo. 3. c. 90.*) for one year, 1s.

For several years, for each of them, 1s.

*Perpetual*, except it be contained in any bible or common prayer book, 10s.

*Book* or pamphlet serving the purpose of an almanack or calendar for a year, 1s.

For several years, for each of them, 1s.

*Book* or pamphlet serving the purpose of a perpetual almanack or calendar, excepting bibles and common prayer books, 10s.

*Appointment*, in execution of a power, of real or personal property, or of any use or interest therein not being a deed or will, 1l. 10s.

And where the same, together with any schedule, receipt, or other matter indorsed or annexed, shall contain 2160 words, for every 1080 words over and above the first 1080 words, a further progressive duty of 1l.

*Appointment* of a chaplain, as a qualification to hold two benefices, 1l. 10s.

*Appraisement* or valuation of any estate or effects, real or personal, or of an interest therein; or of the annual value thereof; or of any dilapidations; or of any repairs wanted; or of the materials and labour used or to be used in any buildings; or of any artificers' work whatsoever.

Where the amount of such appraisement or valuation shall not exceed 50l.

-----	-----	-----	L. 0 2 6
Exceeding 50l. and not 100l.	-----	-----	0 5 0
----- 100l. ----- 200l.	-----	-----	0 10 0
----- 200l. ----- 500l.	-----	-----	0 15 0
----- 500l.	-----	-----	1 0 0

*Exemptions*.—Any appraisement or valuation, in the courts of admiralty.

By 46 *Geo. 3. c. 43.* no person (except auctioneers duly licensed) shall exercise the calling or occupation of an appraiser, or act as such, without taking out a license annually, therein stating his true name and abode, and every such license shall continue in force until July 5, then next following.

And no person shall appraise or value, for or in expectation of hire or reward, without being so licensed as aforesaid, on pain of forfeiting for every offence, 50l.

And every appraiser shall write or set down in figures every valuation or appraisement made by him, or any person for him, and the full amount thereof, and within fourteen days after the making thereof, deliver the same to his employer, on pain of forfeiting for any neglect therein, or for delivering any valuation or appraisement, or the amount thereof, on any parchment or paper, not duly stamped, the sum of 50l.

And no person who shall employ any appraiser to make an appraisement or valuation shall receive or take, or pay or make, any compensation for the making of any such appraisement or valuation, unless the same shall be written or set down in words or figures upon parchment and paper duly stamped, on pain of 20l.

*Apprenticeship and clerkship* of any apprentice, clerk or servant, placed with any master or mistress, to learn any profession, trade, or employment whatsoever; except articles of clerkship to attorneys and others, hereinafter specifically charged.

If the money, or value of any other matter or thing, paid, given,



assigned or conveyed, for the benefit of the master and mistress, or both the money and value shall not amount to 30*l.* L. 1 0 0

Amounting to	30 <i>l.</i> and not to	50 <i>l.</i>	----	2 0 0
-----	50 <i>l.</i>	-----	100 <i>l.</i>	----
-----	100 <i>l.</i>	-----	200 <i>l.</i>	----
-----	200 <i>l.</i>	-----	300 <i>l.</i>	----
-----	300 <i>l.</i>	-----	400 <i>l.</i>	----
-----	400 <i>l.</i>	-----	500 <i>l.</i>	----
-----	500 <i>l.</i>	-----	600 <i>l.</i>	----
-----	600 <i>l.</i>	-----	800 <i>l.</i>	----
-----	800 <i>l.</i>	-----	1000 <i>l.</i>	----

And if the same shall amount to 1000*l.* or upwards 60 0 0

And where there shall be no such consideration; if the indenture shall not contain more than 1080 words, 1*l.*

And if more than that quantity, 1*l.* 15*s.*

Apprenticeship and clerkship of any apprentice, clerk, or servant to a new master or mistress, either by assignment or turnover, or upon the death, absence, or incapacity of the former, or otherwise. Where there shall be any such valuable consideration as aforesaid, exclusive of any part of the consideration to the former master, which may be returned, or given, or transferred to the new master. The like duty in proportion to the amount of such new consideration only, as is charged on the original indenture.

And where there shall be no such new consideration; if the indenture shall not contain more than 1080 words, 20*s.*

And if more than that quantity, 1*l.* 10*s.*

And where there shall be two parts of any such indenture, each part shall be charged with the duty before mentioned, where the same shall not exceed 30*s.*; and where the same shall exceed that sum, only one part shall be charged with the ad valorem duty, the consideration for, and the other part shall be charged with a duty of 1*l.* 10*s.*

Note.— And the part bearing the ad valorem or higher duty, shall belong to and be kept by the apprentice, clerk, or servant, or some person on his behalf; and in case of any subsequent placing out, by assignment or otherwise, the part bearing the ad valorem duty on that occasion (if any) shall belong to and be kept by the former master, or his representatives, or by the apprentice, clerk, or servant, or some person on his behalf; and in each case, the other part, bearing the lower duty, shall belong to and be kept by the master, and received in evidence.

*Exemptions.*—Indentures for placing out poor children apprentices, at the sole charge of any parish or public charity, or pursuant to the act of the 32*d Geo.* 3. for the further regulation of parish apprentices. And all assignments of such poor apprentices, provided there be no consideration given to the new master, other than what may have been given by any parish or township, or by public charity.

*Apprentice and Clerkship,* to serve as clerk to any attorney, or solicitor in any of the courts at Westminster, 110*l.*

The great sessions in Wales, counties palatine of Chester, Lancaster, and Durham; or in any other court of record in England, holding pleas to the amount of 40s. 55*l.*

And for any counterpart of such articles, 1*l.* 10*s.*

*Articles of Clerkship*, whereby any person (not being an attorney of one of the courts of Westminster) shall first become bound to serve as a clerk to a sworn clerk, in the office of the six clerks in chancery, or a sworn clerk, clerk in court, or side clerk in the office of pleas, or the office of his majesty's remembrancer in the court of exchequer, 110*l.*

And for any counterpart thereof, 1*l.* 10*s.*

*Articles of Clerkship*, to serve as a clerk for the residue of the term, in consequence of the death of a former master, or of a contract being vacated by consent or rule of court, or in any other event, 1*l.* 10*s.*

And for any counterpart thereof, 1*l.* 10*s.*

And where any person having entered into any articles of clerkship, bearing a stamp duty of 110*l.* in order to his admission as a sworn clerk, clerk in court, or side clerk, or in order to his admission as an attorney or solicitor shall afterwards enter into any such articles for any other of those purposes; the last mentioned articles shall be charged only with a duty of 1*l.* 10*s.*

And the counterpart thereof, 1*l.* 10*s.*

And where the same articles shall be a qualification to any person, to be admitted, not only as an attorney or solicitor, but also as a sworn clerk, clerk in court, or side clerk, or as an attorney or solicitor in any of the inferior courts, such articles shall not be charged with more than one duty of 110*l.*

*Articles of Clerkship* to a proctor in the high court of admiralty, or the ecclesiastical courts in Doctors Commons, 110*l.*

And for any counterpart thereof, 1*l.* 10*s.*

Articles of indenture of clerkship or apprenticeship to a proctor for the residue of the term, in consequence of the death of a former master, or of the contract between them being vacated, or in any other event, 1*l.* 10*s.*

And for any counterpart thereof, 1*l.* 10*s.*

*Articles of clerkship* to a writer to the signet, or as a solicitor, agent, or attorney, in any of the courts in Scotland, 55*l.*

And for any counterpart thereof, 1*l.* 10*s.*

*Articles or indentures of clerkship* or apprenticeship, to serve as a procurator or solicitor, in the high court of admiralty, the commissary court at Edinburgh, or any other inferior court in Scotland, 25*l.*

And for any counterpart or duplicate thereof, 1*l.* 10*s.*

Articles of clerkship as aforesaid in Scotland, for the residue of the term, in consequence of the death of the former master, or of the contract being vacated, or in any other event, 1*l.* 10*s.*

And for any counterpart thereof, 1*l.* 10*s.*

*Assignment or Assignment* of any property, real or personal, not otherwise charged nor expressly exempted from duty, 1*l.* 10*s.*



And where the same, together with any schedule, receipt, or other matter, shall contain 2160 words or upwards, and then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of *1l.*

*Award* in England, or Scotland, *1l. 10s.*

For every entire quantity of 1080 words therein, over and above the first 1080 a further progressive duty of *1l.*

*Bargain or Sale* (or lease) for a year, to accompany a release of the freehold upon sale thereof, where the purchase money in the release shall not amount to *50l. 15s.*

And where the same shall amount to *50l.* and not amount to *150l. 1l.*

And where the same shall amount to *150l.* or upwards, *1l. 10s.*

*Bargain and sale* (or lease) for a year upon any other occasion, *1l. 10s.*

*Bargain and sale* (to be enrolled) of any estate of freehold upon any other occasion than the mortgage or sale thereof, *5l.*

And for every entire quantity of 1080 words contained therein, over and above the first 1080 words a further progressive duty of *1l.*

*Bill of exchange*, a draft or order, for the payment to the bearer, or to order, either on demand, or otherwise of any sum of money.

*Not exceeding 2 months or 60 days sight.*

		£.	s.	d.	Exceeding do.	£.	s.	d.
If . . .	2l. and not exceeding 5l. 5s.	0	1	0	0	1	6	
Above 5l. 5s.	20l.	0	1	6	0	2	0	
—	20l.	0	2	0	0	2	6	
—	30l.	0	2	6	0	3	6	
—	50l.	0	3	6	0	4	6	
—	100l.	0	4	6	0	5	0	
—	200l.	0	5	0	0	6	0	
—	300l.	0	6	0	0	8	6	
—	500l.	0	8	6	0	12	6	
—	1000l.	0	12	6	0	15	0	
—	2000l.	0	15	0	1	5	0	
—	3000l. . . . .	1	5	0	1	10	0	

Bill, draft, or order for the payment of money, though not payable to the bearer or to order, if the same shall be delivered to the payee, or some person on his behalf, the same duty as if payable to bearer or order. Bill, draft, or order for the payment of any money, weekly, monthly, or at any other stated period, if made payable to the bearer, or to order, or if delivered to the payee; where the total amount of the money shall be specified therein, the same duty as on a bill payable to bearer or order, for such total amount. And where the total amount shall be indefinite, the same duty as on a bill for the sum therein expressed only. And the following instruments shall be deemed to be inland bills, drafts, or orders, viz.

All drafts or orders for the payment of any money, by a bill or promissory note, or for the delivery of any such bill or note, in payment or satisfaction of any sum of money; where such drafts or

orders shall require the payment or delivery to be made to the bearer, or to order, or shall be delivered to the payee, or some person on his behalf.

All receipts given by any banker, or other person, for money received, which shall entitle the person paying the money, or the bearer of such receipts to receive the like sum from any third person. And all bills, drafts, or orders for the payment of any money, out of any particular fund, which may or may not be available; or upon any condition of contingency, which may or may not be performed or happen; if the same shall be made payable to the bearer, or to order, or if the same shall be delivered to the payee or some person on his behalf.

*Foreign bill of exchange*, (or bill of exchange drawn in but payable out of Great Britain) if drawn singly, and, not in a set, the same duty as on an inland bill.

*Foreign bills of exchange*, drawn in sets according to the custom of merchants; for every bill of each set, where the sum made payable thereby shall not exceed 100*l.*

		L. 0 1 6	
Exceeding	100 <i>l.</i> and not exceeding	200 <i>l.</i>	0 3 0
_____	200 <i>l.</i>	_____	500 <i>l.</i> 0 4 0
_____	500 <i>l.</i>	_____	1000 <i>l.</i> 0 5 0
_____	1000 <i>l.</i>	_____	2000 <i>l.</i> 0 7 6
_____	2000 <i>l.</i>	_____	3000 <i>l.</i> 0 10 0
	3000 <i>l.</i> and above		0 15 0

*Exemptions.* All bills of exchange, or bank post bills, issued by the Bank of England. All bills, orders, remittance bills, remittance certificates drawn by commissioned officers, masters and surgeons in the navy, or by any commissioner of the navy. All bills drawn by the commissioners of the navy, victualling, transport, and sick, and hurt offices, upon the treasurer of the navy. All drafts or orders for the payment of money to the bearer on demand, and drawn upon any banker, or person acting as a banker, who shall reside or transact the business of a banker, within ten miles of the place where such drafts or orders shall be drawn; provided such place shall be specified in such drafts or orders; and provided the same shall bear date on or before the day on which the same shall be issued; and provided the same do not direct the payment to be made by bills or promissory notes. All bills, for the pay and allowances to or on account of the forces, except such as shall be drawn in favour of contractors or others, who furnish bread or forage, and who by their contracts shall be liable to pay the stamp duties.

*N. B.* By 31 *G. 3. c. 25.* all persons who shall write or sign, or cause to be written or signed, or who shall accept or pay, or cause to be accepted or paid, any bill, &c. without being first stamped with a proper stamp, or upon which there shall not be some stamp resembling the same, shall forfeit 20*l.* Increased by 48 *G. 3. c. 149.* to 50*l.*

No bill, &c. shall be available in law or equity unless stamped with the lawful stamp; and it shall not be lawful for the commis-



sioners to stamp any paper, &c. after any bill, &c. shall be written thereon, under any pretence whatever.

But, by 37 G. 3. c. 136. s. 5. it shall be lawful for any person who shall be the holder of any bill, note, draft, or order made after July 20, 1797, which shall be stamped with a stamp of a different denomination than required, if the same shall be equal or superior in value to the stamp required, to produce the same within the times herein after mentioned to the head officer, or such officer as the commissioners shall appoint; and the commissioners may direct the proper officer, upon payment of the duty, and such penalty as is after mentioned, over and above the duty, to stamp such bill, note, draft, or order, with the proper stamp, and to give a receipt for the duty and penalty, so paid, on the back of such bill, note, draft, or order.

If any such bill, note, draft, or order, shall be produced before the same shall be payable, the same shall be stamped on payment of the said duty, and the penalty of 40s. but if the same shall be payable before the production thereof to the commissioners, then the same shall not be stamped, unless on payment of the duty and 10l. for the penalty.

*Bill of lading*, of or for any goods, or merchandize, or effects to be exported (48 G. 3. c. 149) 3s.

*Bond in England or Scotland*, given as security for money, not exceeding

Exceeding	--	--	--	100l.	1	0	0
Exceeding	100l.	and not exceeding		300l.	1	10	0
-----	300l.	-----		500l.	2	0	0
-----	500l.	-----		1000l.	3	0	0
-----	1000l.	-----		2000l.	4	0	0
-----	2000l.	-----		3000l.	5	0	0
-----	3000l.	-----		4000l.	6	0	0
-----	4000l.	-----		5000l.	7	0	0
-----	5000l.	-----		10000l.	9	0	0
-----	10000l.	-----		15000l.	12	0	0
-----	15000l.	-----		20000l.	15	0	0
-----	20000l.	-----	-----	-----	20	0	0

*Bond* given as a security for the repayment of any money, to be thereafter lent, or which may become due upon an account current, together with any sum already advanced, or due, or without as the case may be:

Where the total amount of the money secured, or to be ultimately recoverable thereupon, shall be uncertain and without limit, 20l.

And where the money secured, or to be ultimately recoverable thereupon, shall be limited not to exceed a given sum, the same duty as on a bond for such limited sum.

*Bond* given as a security for the transfer, or re-transfer of any share of the government or parliamentary stocks, or stock of the bank of England, East India, or South Sea company, the same duty as on a bond for money, equal to the value of the stock secured, on the day of the date of the bond, or on either of the ten days preceding.

*Bond* given as a security for the payment of any money, or for

the transfer, or re-transfer of any share in any of the stocks before mentioned, which shall be in part secured by a mortgage, or other instrument herein after charged with the same duty as a mortgage, bearing even date with such bond; or for the performance of covenants contained in such mortgage or other instrument; or for both those purposes, *1l.*

*Bond* given as the only or principal security for the payment of any annuity, upon the original creation thereof. See conveyance upon the sale of lands, &c.

*Bond* given as a collateral security for the payment of any annuity, upon the original creation thereof, where the same shall be granted by any other deed, liable to the ad valorem duty, herein after imposed on conveyances, *1l.*

*Bond* given as a security for the payment of any annuity, (except upon the original creation thereof) or of any money at stated periods, (not being interest for any principal sum) nor rent reserved upon any lease or tack for any certain term, so that the total amount of the money to be paid can be ascertained, the same duty as on a bond for the payment of money, equal to such total amount.

*Bond* given as a security for the payment of any annuity, (except as aforesaid) or of any money at stated periods, (not being interest for any principal sum, nor rents reserved upon any lease or tack) for the term of life, or any other indefinite period so that the whole money to be paid cannot previously be ascertained.

Where the annuity or sum secured shall not amount to 10l. per annum.	-----	-----	-----	1 0 0
Amounting to	10l. and not to	50l.	per annum	1 10 0
-----	50l.	-----	100l.	-----
-----	100l.	-----	200l.	-----
-----	200l.	-----	300l.	-----
-----	300l.	-----	400l.	-----
-----	400l.	-----	500l.	-----
-----	500l.	-----	750l.	-----
-----	750l.	-----	1000l.	-----
-----	1000l.	-----	1500l.	-----
-----	1500l.	-----	2000l.	-----
-----	2000l. and upwards	-----	-----	-----

But where there shall be both a personal and heritable bond, in Scotland, in separate deeds of the same date, for securing such annuity, or sums, and the ad valorem duty above charged, shall amount to *1l. 10s.* or upwards; the heritable bond only shall be charged with the ad valorem duty, and the personal bond shall be only with a duty of *1l.*

*Bond*, commonly called counterbond, for indemnifying any person who shall have become bound as surety for the payment of any money or annuity, or for the transfer of any share in any of the stocks or funds before mentioned, *1l.*

*Bond* for the due execution of an office, and to account for money received by virtue thereof, *1l.*

*Bond* given pursuant to the directions of any act of parliament,



or by the direction of the commissioners of customs or excise, or any of their officers in respect of any of the duties, or for any matter relating thereto, 15s.

*Bond*, not otherwise charged, nor expressly exempted from duty. 1*l.*

Heritable bond in Scotland, not otherwise charged, nor exempted from duty, 1*l.* 10s.

Where any such bond, together with any schedule, receipt, or other matter, shall contain 2160 words or upwards, there shall be charged for every entire quantity of 1080 words, over and above the first 1080 words, a further duty of 1*l.*

And where any such bond shall be given as a security for the payment of money, and also of a share in any of the stocks or funds before mentioned, or an annuity, or both; or for the payment of an annuity, and also of a share in any of the said stocks or funds, the proper ad valorem duty shall be charged in respect of each.

And where any such bond shall be given as a security for the payment or transfer, to different persons, of separate and distinct sums of money, or annuities, or shares in any of the stocks or funds before mentioned, the proper ad valorem duty shall be charged in respect of each distinct sum or annuity, or share, and not upon the aggregate amount thereof.

CONVEYANCE upon the sale of lands, tenements, rents, annuities, or other property, where the purchase or consideration money, therein or thereupon expressed, shall not amount to 20*l.* 0 10 0

To	20 <i>l.</i>	and not	50 <i>l.</i>	-----	1 0 0
	50	-----	150	-----	1 10 0
	150	-----	300	-----	2 0 0
	300	-----	500	-----	3 0 0
	500	-----	750	-----	6 0 0
	750	-----	1,000	-----	9 0 0
	1,000	-----	2,000	-----	12 0 0
	2,000	-----	3,000	-----	25 0 0
	3,000	-----	4,000	-----	35 0 0
	4,000	-----	5,000	-----	45 0 0
	5,000	-----	6,000	-----	55 0 0
	6,000	-----	7,000	-----	65 0 0
	7,000	-----	8,000	-----	75 0 0
	8,000	-----	9,000	-----	85 0 0
	9,000	-----	10,000	-----	95 0 0
	10,000	-----	12,500	-----	110 0 0
	12,500	-----	15,000	-----	130 0 0
	15,000	-----	20,000	-----	170 0 0
	20,000	-----	30,000	-----	240 0 0
	30,000	-----	40,000	-----	300 0 0
	40,000	-----	50,000	-----	450 0 0
	50,000	-----	60,000	-----	550 0 0
	60,000	-----	80,000	-----	650 0 0
	80,000	-----	100,000	-----	800 0 0
100,000	or upwards	-----	-----	-----	1,000 0 0

And where any freehold lands or hereditaments in England shall be conveyed by a deed of feoffment, with or without any letter of attorney to deliver or receive seisin, or by a deed of bargain and sale inrolled; such deed of feoffment or bargain and sale, unless accompanied with a lease or release, shall be charged with a further duty as follows:—

If the consideration money shall be under 20l.	0	10	0
Amounting to 20l. and not to 50l.	0	15	0
----- 50 ----- 150	1	0	0
----- 150 or upwards	1	15	0

But if there shall be both a feoffment and a bargain and sale inrolled, then the said further duty shall not attach on either.

Where the principal deed with schedule or indorsements contains 2160 words or upwards, for every 1080 words after the first, a further progressive duty of

-----	1	0	0
Conveyance of any kind not otherwise charged	1	15	0
When the same exceeds 2160 words, then for every 1080 words after the first 1080	1	5	0

		<i>Receipts.</i>			
Amounting to	2l.	and under	5l.	--	0 0 2
-----	5l.	-----	10l.	--	0 0 3
-----	10l.	-----	20l.	--	0 0 6
-----	20l.	-----	50l.	--	0 1 0
-----	50l.	-----	100l.	--	0 1 6
-----	100l.	-----	200l.	--	0 2 6
-----	200l.	-----	300l.	--	0 4 0
-----	300l.	-----	500l.	--	0 5 0
-----	500l.	-----	1,000l.	--	0 7 6
-----	1,000l. or upwards	-----		--	0 10 0
Receipts in full of all demands				--	0 10 0

And any note, memorandum, or writing whatsoever, given to any person for or upon the payment of money, whereby any sum of money, debt, or demand, or any part of any debt or demand therein specified, and amounting to 2l. or upwards, shall be expressed or acknowledged to have been paid, settled, balanced, or otherwise discharged or satisfied, or which shall import or signify any such acknowledgment, and whether the same shall or shall not be signed with the name of any person, shall be deemed and taken to be a receipt for a sum of money, of equal amount with the sum, debt, or demand so expressed or acknowledged to have been paid, settled, balanced, or otherwise discharged or satisfied, within the intent and meaning of this schedule, and shall be charged with a duty accordingly.

By 35 G. 3. c. 55. every person who shall write or sign, or cause to be written or signed, any receipt, discharge, or acquittance liable to duty, without the same being first duly stamped, or upon which there shall be a stamp of lower denomination than is charged in respect thereof, shall forfeit 10l. if the sum paid shall not amount to 100l.; and 20l. if it amounts to 100l. or upwards.

The stamp to be paid by the person giving the receipt, except when money is paid for the use of his majesty.



Any person refusing to give a receipt upon demand, or to pay the amount of the stamp, is liable to the penalty of 10*l*.

STAPLE INN is traditionally reported to have been called "Staple Hall," and to have been anciently a sort of exchange or meeting-place for the wool-merchants, or staplers.

In the reign of Henry V. however, and probably before, it had become an inn of chancery, the society still possessing a manuscript of the orders and constitutions made at that period. It was then held by lease (for the first grant of the inheritance of it to the ancients of Gray's Inn, from John Knighton and Alice his wife, daughter of John Chapwood, was by indenture of bargain and sale, dated 10 November, 20 Henry VIII.); after which there were other feoffments made. For, upon the 4th of day of June, 20 *Jac.* 1. sir Francis Bacon, knight, then lord Verulam, and viscount St. Alban, did enfeoff sir Edward Moseley, knight, attorney of the dutchy of Lancaster, sir Henry Yelverton, and others, the ancients of Gray's Inn, of this seminary, by the name of "All the message or inn of chancery commonly called Staple Inne, and one garden thereunto adjoining, with all and singular their appurtenances, in times past belonging to John Knighton, gentleman, and Alice his wife, situate in the parish of St. Andrew's, Holberne, in the suburbs of London; which message, &c. the said Francis lord Verulam lately had, together with John Brograve, esq. attorney to queen Elizabeth, of the dutchy of Lancaster, Richard Munger, William Whyskins, and others, then deceased, of feoffment of sir Gilbert Gerard, knight, then master of the rolls, Ralph Brereton, esq. and William Porter, gentleman, as by their said deed, dated 18 Maii, 32 Elizabeth, more fully appeareth, to have and to hold to the said sir Edward Moseley, and others, their heirs and assigns, to the only use and behoof, of the same Edward, Henry, and their heirs and assigns for ever."

This inn stands on the south side of Holborn, nearly opposite Gray's Inn Lane, and is one of the two inns of chancery belonging to Gray's Inn. It consists of two large courts surrounded with buildings. Great part of the second court was rebuilt in the early part of the last century, and contains a small garden, pleasantly laid out. The first court, adjoining Holborn, and particularly the street front, is of much greater age. The latter extends a considerable length, and has a very antique but decayed appearance. From the fashion of the stone framed windows at the back of the building, it must at least be as old as the time of queen Elizabeth, and may possibly have been built much earlier.

The hall of this inn, which divides the two squares, is a modern erection, at least it does not appear equally ancient with some of the other buildings. It contains, on the outside, a clock and a small turret. The interior forms a large handsome room, and is neatly kept.

In the windows are a few coats of arms of former members or

benefactors. The hall likewise contains some portraits, of no particular interest, and casts of the twelve Cæsars, on brackets.

STAR-CHAMBER, was a very ancient court, but new modelled afterwards by divers statutes. It consisted of several of the lords spiritual and temporal, being privy counsellors, together with two judges of the courts of common law, without the intervention of any jury. The legal jurisdiction extended over riots, perjury, misbehaviour of public officers, and other notorious misdemeanours. But afterwards, they stretched their power beyond the utmost bounds of legality, vindicating all the encroachments of the crown in granting monopolies, in issuing proclamations which should have the force of laws, in punishing small offences, or no offences at all, but of their own creating, by exorbitant fines, imprisonment, and corporal severities; until at last this court became so odious, that it was finally abolished by the 16 *Car. I. c. 10.*

STATUTE, is a written law, made with the concurrence of the king and both houses of parliament.

Divers acts of parliament have attempted to bar, restrain, suspend, qualify, or make void, the acts of subsequent parliaments: but this could never be effected, for a latter parliament hath ever power to abrogate, suspend, qualify or make void, the acts of a former, in the whole, or any part thereof, notwithstanding any words of restraint or prohibition in the acts of the former.

When a statute is repealed, all acts done under it, while it was in force, are good: but if it is declared null, all these are void.

Where a statute before perpetual, is continued by an affirmative statute, for a time, this does not amount to a repeal of it at the end of that time.

Where two acts contradictory to each other, are passed in the same session, the latter only shall take effect.

STATUTE MERCHANT, is a bond of record, acknowledged before one of the clerks of the statute merchant, and lord mayor of the city of London, or two merchants of the said city, for that purpose assigned, or before the mayor or warden of the towns, or other discreet men for that purpose assigned. This recognisance is to be entered on a roll, which must be double, one part to remain with the mayor, and the other with a clerk, who shall write with his own hand a bill obligatory, to which a seal of the king, for that purpose appointed, shall be affixed, together with the seal of the debtor.

The design of this security, was to promote and encourage trade, by providing a sure and speedy remedy for merchant strangers, as well as natives, to recover their debts at the day assigned for payment.

But though the statute merchant seems first to be introduced, and wholly calculated for the ease and benefit of merchants, as the name itself imports; yet they were not long engrossed by them, for other men finding from their own observation, that they have much of the



same nature with judgments in Westminster Hall, but obtained with less trouble and expense, out of regard to their own interest and quiet, easily fell into this way of contracting, and by degrees it came to be improved into a common assurance, as we find it at this day.

STATUTES, or STATUTE SESSIONS, otherwise called petit sessions, are a meeting in every hundred, of all the shires in England, where by custom, they have been used, whereto the constables and others, both householders and servants repair for the debating of differences between masters and servants, the rating of servants' wages, and bestowing such people in service, as being fit to serve, either refuse to seek or get masters.

STOLEN GOODS, to help people to stolen goods for reward without apprehending the felon, is felony.

Persons having or receiving lead, iron, copper, brass, bell-metal, or solder, knowing the same to be stolen, shall be transported.

By 6 *G. 1. c. 23.* persons prosecuting to conviction any person taking reward for helping to stolen goods, not having apprehended the felon, shall be entitled to a reward of 4*l.*

By 25 *G. 2. c. 36.* the persons advertising a reward, with no questions asked, for the return of things stolen or lost, or to pay the pawnbroker any money lent thereon, and the printer, shall respectively forfeit 5*l.*

By 29 *G. 2. c. 30.* buyers or receivers of lead, iron, copper, brass, bell-metal, or solder, knowing the same to be stolen, if convicted, shall be transported for fourteen years. Justices may issue a search-warrant; and suspected persons found with any materials in the night may be apprehended by the parish officers or watchmen, and carried before two justices; the goods are to be advertised, and till claimed, to be deposited in the hands of the churchwardens, or overseers: if not claimed in thirty days they are to be sold, and the produce divided between the officer and the poor. Persons to whom such goods shall be offered for sale or pawn shall, on suspicion, seize the offender, and carry him before a justice, on pain of being deemed guilty of a misdemeanor, and forfeiting, for the first offence, 20*s.* for the second, 40*s.* and for every subsequent offence, 4*l.* Persons having such stolen materials in their possession, and not accounting satisfactorily for the same, shall be guilty of a misdemeanor, and forfeit 40*s.* for the first offence; for the second, 4*l.* and for every other, 6*l.* Offenders convicting the buyers or receivers of such stolen materials are entitled to a pardon. The forfeitures to go, half to the poor, and half to the informer, to be levied by distress and sale; and for want thereof the party shall be imprisoned, for the first offence, one month; for the second, two months; and for every other offence, at the discretion of the sessions.

By 22 *Geo. 3. c. 58.* every person buying or receiving stolen goods shall be deemed guilty of a misdemeanor, and prosecuted accordingly.

Justices may grant search-warrants to discover stolen goods; and

persons in whose custody they are found shall be deemed guilty of a misdemeanor. Constables may apprehend persons suspected of having any stolen goods between sun-setting and sun-rising, and on conviction, they may be imprisoned not more than six nor less than three months.

Persons offering stolen goods to be pawned or sold shall be taken before a justice; and persons, under fifteen years of age, charged with felony within clergy, discovering two receivers, shall be entitled to his majesty's pardon. But this act shall not repeal any former law for punishing such offenders.

**STORES.** If any person who has the charge or custody, of any of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals for victualling the navy, shall, to hinder his majesty's service, embezzle, purloin, or convey away the same to the value of 20*s.* or shall steal or embezzle, any of his majesty's sails, cordage, or any other of his naval stores, to the value of 20*s.* he shall be adjudged guilty of felony without benefit of clergy.

The treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy, may act as justices in causing the offender to be apprehended, committed, and prosecuted for the same.

If any person shall wilfully and maliciously set on fire, burn, or destroy, any of his majesty's military, naval, or victualling stores, or other ammunition of war, or any place, where any such stores or ammunition shall be kept, he and his abettors shall be guilty of felony without benefit of clergy.

By 39 and 40 *G. 3. c. 89.* every person (not being a contractor) who shall sell or receive any new stores of war, or who shall conceal them, shall be deemed a receiver of stolen goods, and as such transported for fourteen years, unless he produces on the trial, a certificate from the navy board, ordnance, or victualling.

Persons in whose custody shall be found canvass or buntin, with a serpentine blue streak (not being charged to be new, or not more than one-third worn), and persons who shall be convicted of any offence contrary to 9 and 10 *W. 3.* shall besides the forfeiture thereby imposed, suffer corporal punishment; but the judge or justices may mitigate the penalty of 200*l.* as they see cause. But nothing herein, or in the act of *W. 3.* shall exempt contractors or others, except so far as concern naval stores, which shall not have been before delivered into the king's stores, unless they have been sold or returned by the commissioners.

If any person shall deface any mark denoting the property of the crown in any stores, or shall employ any person so to do, he shall be guilty of felony, and transported for fourteen years. And if any person convicted of any offence contrary to this act, for which he shall not have been transported, or contrary to the act of *W. 3.* shall be convicted of a second offence, which would not as the first, subject him to transportation, he shall be transported for fourteen years.



Persons returning from transportation, under this act, shall suffer as felons without clergy. But the court may mitigate the punishment of transportation by pillory, whipping, fine, or imprisonment; and fines are to be applied, one half to the informer, and one half to the king.

If any person shall discover to the navy, ordnance, or victualling boards, or apprehend, any offender guilty of stealing or embezzling his majesty's stores, or of any offence against the act of *W. 3.* or this, which shall not be prosecuted in a summary way, he shall, on conviction, receive a reward of 20*l.* over his share of the penalty, if not more than that sum.

If any dispute shall arise as to the title to such reward, it shall be determined by any of the commissioners of the boards. And such reward shall be paid on certificate from the officer of the court where the offender shall be tried, for which he may charge 5*s.*

Any commissioner of the navy, ordnance or victualling, or any justice of the peace, may grant warrants for searching places, when oath is made that there is reason to suspect that king's stores are concealed (and if any stores or goods, marked as herein before, or in the act of *W. 3.* mentioned, shall be found, the offender shall be dealt with according to law); and if upon such search, or any seizure of stores or goods marked as aforesaid, any not marked shall be found, suspected to belong to the king, and the party shall not give a satisfactory account thereof, they shall be forfeited, and he shall be deemed guilty of a misdemeanor. And the persons deputed by the commissioners of the navy, ordnance, or victualling, may detain any craft in which may be suspected to be contained any articles stolen from his majesty's stores, and the parties, who shall be dealt with according to law respecting marked stores; and those not marked, suspected to belong to the crown, not satisfactorily accounted for, shall be forfeited, and the party deemed guilty of a misdemeanor; and if the person be convicted of stealing marked articles, or adjudged guilty of a misdemeanor with respect to unmarked ones, the craft in which found shall be forfeited. Persons so deputed, may detain any craft, in which may be suspected to be contained any articles stolen from his majesty, and the parties, who shall be dealt with according to law, respecting marked stores; and those not marked, suspecting to belong to his majesty, and not satisfactorily accounted for, shall be forfeited, and the party deemed guilty of a misdemeanor. And if the person be convicted of stealing marked articles, or adjudged guilty of a misdemeanor, with respect to unmarked ones, the craft in which found shall be forfeited.

Persons so deputed, or any police or peace officer, may apprehend persons suspected of having stolen articles, and may seize the articles, and convey them and the parties before a justice, and the like proceedings shall be had as with respect to stores found in any craft. Articles herein declared to be forfeited, on the parties not giving a satisfactory account of them, shall be returned into his

majesty's stores, and applied for his use, unless proof be made within three months to the contrary.

The commissioner or justice, by whom any craft shall be adjudged to be forfeited, shall issue his warrant to the officers of the customs for the sale thereof, who shall cause it and the furniture to be sold publicly; and the produce shall be paid to the commissioner or justice, and disposed of, one half to the seizer of the craft, and the other to the treasurer of the navy if naval stores, or the treasurer of the ordnance if ordnance stores.

Persons guilty of misdemeanors, shall forfeit, for the first offence, 40s. ; for the second, 5l. ; for the third, 10l. ; which may be levied by distress : to be applied, one half to the informer, and one half to the navy or ordnance board ; and if distress cannot be found, the offender, who shall be kept in custody, shall be committed for three months. Abjudications in misdemeanors, shall be certified to the next general or quarter sessions, and shall be final.

Any commissioner of the navy, ordnance, or victualling, or justice of the peace, may determine any complaint against persons, not being contractors, for unlawfully selling or receiving stores not exceeding 20s. value, and may fine the offender 10l. Which fine shall be levied by distress, and applied, one half to the informer, and one half to the navy board, or ordnance ; and if sufficient distress cannot be found, the offender may be committed to the common gaol, or in lieu of the fine, may be kept to hard labour for three months ; the commissioner or justice shall pay over the fines received within thirty days, or forfeit 50l. and double costs by action, half to the king, and half to the informer. And the fine of 10l. may be mitigated to one half besides expenses.

If instead of a fine the offender be imprisoned, the informer shall receive 5l. reward from the navy or ordnance board, upon production of a certificate from the commissioner or justices who convicted him. But no summary proceedings are to be had before any justice without the consent of the commissioners of the navy, ordnance, or victualling.

Persons thinking themselves aggrieved by any judgment touching stores under the value of 20s. may appeal to the quarter sessions ; but no *certiorari*. And all witnesses neglecting to attend, shall forfeit 10l.

Nothing herein shall prevent parties accused of selling or receiving stores under the value of 20s. from being prosecuted as receivers of stolen goods, so as offenders be not twice punished for the same offence. And the commissioners may sell marked stores, and the buyers may keep them without incurring any penalty, on producing a certificate of their having bought them.

Penalty for giving or publishing false certificates 200l. and corporal punishment, and penalty to go half to the king and half to the informer.

If any person shall be sued for any seizure, and shall prove on the trial that the stores were marked, or if not marked might be



suspected to belong to the king, or if the plaintiff shall not prove that he had a certificate, the defendant shall be acquitted.

The commissioners shall have the benefit given to justices of the peace by 7 *Jac.* 1. c. 5. 21 *Jac.* 1. c. 12. and 24 *Geo.* 2. c. 44. ; and the peace officers acting under them, shall have the protection of the said acts.

Persons forswearing themselves shall be liable to the pains of wilful perjury.

**SUBPŒNA**, is a writ whereby all persons under the degree of peerage, are called into chancery, in such case only where the common laws fails, and hath made no provision ; so as the party who in equity hath wrong, can have no other remedy by the rules and course of common law. But the peers of the realm in such cases, are called by the lord chancellor's, or lord keeper's letters, giving notice of the suit intended against them, and requiring them to appear. There is also a *subpœna ad testificandum* for the summoning of witnesses as well in chancery as other courts.

There is also a *subpœna* in the exchequer, as well in the court of equity there as in the office of pleas.

By the 45 *G.* 3. c. 92. service of *subpœna* on parties or witnesses in any part of the united kingdom shall be valid to compel appearance in any part. And the expense of attendance on writs of *subpœna* shall be tendered to witnesses.

**SUPERSEDEAS**, a writ that lies in a great many cases, and signifies in general, a command to stay proceedings, on good cause shown, which ought otherwise to proceed.

By a *supersedeas*, the doing of a thing, which might otherwise have been lawfully done, is prevented ; or a thing that has been done, is (notwithstanding it was done in a due course of law) thereby made void.

**SURETY OF THE PEACE.** A justice of the peace may, according to his discretion, bind all those to keep the peace, who in his presence shall make any affray, or shall threaten to kill or beat any person, or shall contend together in hot words, and all those who shall go about with unlawful weapons, or attendance, to the terror of the people ; and all such persons as shall be known by him to be common barrators ; and all who shall be brought before him by a constable, for a breach of the peace in the presence of such constable ; and all such persons, who having been before bound to keep the peace shall be convicted of having forfeited their recognisance.

When surety of the peace is granted by the court of king's bench, if a *supersedeas* come from the court of chancery to the justices of that court, their power is at an end ; and the party as to them discharged.

If security of the peace be desired against a peer, the safest way is to apply to the court of chancery, or king's bench.

If the person against whom security of the peace be demanded, be present, the justice of the peace may commit him immediately,

unless he offer sureties; and *a fortiori* he may be commanded to find sureties, and be committed for not doing it.

Where one is surety for another, and the surety has become a bankrupt, and the creditor has claimed to prove under his commission, his right to do so has been held to depend upon the surety's engagement to the creditor being absolute at the time of the bankruptcy. But if the engagement is collateral, and depending upon a contingency, the debt cannot be proved under a commission against the surety.

By the 49 *Geo. 3. c. 121.* in all cases of commissions of bankrupt already issued, under which no dividend has yet been made, or under which the creditors, who have not proved, can receive a dividend equally in proportion to their respective debts without disturbing any dividend already made, and in all cases of commissions of bankrupts hereafter to be issued, where at the time of issuing the commission any person shall be surety for or be liable for any debt of the bankrupt, it shall be lawful for such surety or person liable, if he shall have paid the debt, or any part thereof in discharge of the whole debt, although he may have paid the same after the commission shall have issued, and the creditor shall have proved his debt under the commission, to stand in the place of the creditor as to the dividends upon such proof, and when the creditor shall not have proved under the commission, it shall be lawful for such surety or person liable, to prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and to receive a dividend or dividends proportionably with the other creditors taking the benefit of such commission, notwithstanding such person may have become surety or liable for the debt of the bankrupt after an act of bankruptcy had been committed by such bankrupt, provided that such person had not at the time when he became such surety, or when he so became liable for the debt of such bankrupt, notice of any act of bankruptcy by such bankrupt committed, or that he was insolvent, or had stopped payment; provided always, that the issuing a commission of bankrupt, although such commission shall afterwards be superseded, shall be deemed such notice; and every person against whom any such commission of bankrupt has been or shall be awarded, and who has obtained or shall obtain his certificate, shall be discharged of all demands at the suit of every such person having so paid, or being hereby enabled to prove as aforesaid, or to stand in the place of such creditor as aforesaid, with regard to his debts in respect of such suretyship or liability, in like manner to all intents and purposes as if such person had been a creditor before the bankruptcy of the bankrupt for the whole of the debt in respect of which he was surety or was so liable as aforesaid.

**SURRENDER**, a deed or instrument, testifying that the particular tenant of lands or tenements for life, or years, doth sufficiently consent and agree, that he which has the next or immediate remainder or reversion thereof, shall also have the present estate of the



same in possession; and that he yields and gives up the same unto him; for every *surrenderer* ought forthwith to give possession of the things surrendered.

**SWEARING.** By the statute 21 *Jac.* 1. c. 20. if any person profanely swear or curse in the hearing of any justice, mayor, &c. or shall be convicted of such swearing, &c. by the oath of two witnesses, or confession before any justice or mayor, &c. he shall forfeit for every such offence, to the use of the poor, 1s.

The prosecution was to be within twenty days after the offence, and the penalty was to be levied by warrant and distress, &c.

And if no distress was to be had, the offender being above twelve years old, was to be set in the stocks three hours; if under that age, and the said penalty not paid, then he was to be whipt by the constable, by warrant of the justice, or by the parent or master, in the presence of the constable.

But by the statute 6 and 7 *W.* 3. c. 11. which was made to amend and supply the defects of the former laws, the conviction may be by the oath of one person. And the forfeiture of 1s. is confirmed to day labourers, common soldiers, and seamen; but every other person is to pay 2s. for each oath or curse.

For the second offence, double the forfeiture; for the third offence, three times as much as the first.

In default of distress, the offender being above sixteen years of age, shall be set in the stocks for one hour for every single offence, and for more than one, (if convicted at the same time) then two hours.

If under sixteen, and shall not immediately pay, &c. he shall be whipt by the constable, by warrant of the justice, or by the parent, guardian, or master, in presence of the constable.

The justice who omits the duty of his office forfeits 5*l.* one moiety to the informer, the other to the poor.

If any action be brought against any officer, &c. he may plead the general issue, and give the special matter in evidence; and upon verdict for the defendant, or nonsuit, or discontinuance of the plaintiff, the defendant shall have treble costs.

Every offence against this act shall be proved within ten days after the offence committed.

The act is to be read in churches quarterly, under the penalty of 20s. for every omission.

**SWINDLERS.** By 33 *Hen.* 8. c. 1. persons obtaining another's money, goods, or other things, by any false token, or counterfeit letter, shall suffer imprisonment, pillory, or any corporal punishment, as the court, on conviction, shall adjudge. And by 30 *Geo.* 2. c. 24. persons convicted of obtaining money or goods by false pretences, or of sending threatening letters in order to extort money or goods, may be punished by fine and imprisonment, or by pillory, whipping, or transportation.

**TAX,** may now be defined to be a certain aid, subsidy, or supply, granted by the commons of Great Britain in parliament assembled,

constituting the king's extraordinary revenue, and paid yearly towards the expenses of government.

**ASSESSED TAXES,** By the act of 59 G. 3. *cap.* 51. it is enacted, that the assessments made for the year ending on the 5th of April, 1819, shall remain to the same amount, in respect of all persons who shall compound for the annual payment thereof for the term of three years, to commence from the said 5th day of April, 1819, upon the terms and conditions hereinafter mentioned; and it shall be lawful for the commissioners acting in the execution of the assessed tax acts, for any county, city, town, or place, in Great Britain, or any two or more of them, to contract and agree with any person who is assessed for the said year ending on the 5th of April, 1819, and who shall apply to them for that purpose, in the same division in which such assessment hath been made, for the composition of his assessed taxes, for the said period of three years; and all persons assessed for the year ended as aforesaid, are hereby respectively declared to be competent to enter into composition with the said respective commissioners, for their assessed taxes, for the term of three years, to commence from the said 5th day of April, on the same amount annually, as shall have been assessed upon them, for the year ended as aforesaid, together with an additional annual rate of 1s. for every 20s. of the amount so assessed, except the duty in respect of killing game.

The compositions on the house and window duties are to be made separately and distinctly from all the other duties.

Compositions will entitle the persons compounding to open additional windows, and to keep additional articles, free of duty, of the same description as those before charged, and will exempt from the provisions and assessments of assessed tax acts; except when chargeable for another dwelling-house, or for articles of a different description.

- Provided that no composition shall be entered into with any person who shall have become chargeable in the present year, by reason of any different or additional establishment set up within the year ending on the 5th day of April, 1819, to a greater amount of duty, than hath been charged on him, in the said last year's assessment, without including as well the amount of duty so charged in the said assessment, as the increased amount of duty so becoming chargeable by reason of such different or additional establishment, nor in any such case where a *bona fide* return of such different or increased establishment shall not be made before the 1st day of July, 1819.

No person shall be chargeable under the acts in force at the time of passing this act, after the expiration of the said term of three years, for any part of the increased establishment not included in the composition entered into under this act, who shall give six months' previous notice of his intention to discontinue the same,



and who shall actually have ceased to keep the same calendar month prior to the expiration of the said period of three years.

When an establishment shall have consisted in part of articles whereon a less duty hath been made payable by any act in the present session of parliament, it shall be lawful to enter into compositions under this act, on the amount of duty charged on other articles on the said last assessment, together with the amount of duty so made chargeable by the said act of the present session of parliament.

Every composition entered into under this act, in respect of the duties charged on a dwelling-house, from which the persons or person entering into the same, shall remove during the term herein limited, shall cease and determine on the 5th day of April next after such removal; and every composition entered into under this act, in respect of any other of the duties granted by the said acts, with any person who within the said term herein limited shall die, or become bankrupt or insolvent, or shall assign his goods, chattels, or effects, shall also cease and determine on the 1st day of April next after such death, bankruptcy, insolvency, or assignment.

Compositions shall bind the party to the punctual payment of the amount.

Parties removing, and the executors and assigns of persons dying, or becoming bankrupt or insolvent, shall be answerable for the compositions to the end of the year.

The composition monies shall be payable quarterly in the same manner as the assessed taxes; provided always, that every person so compounding, the amount of whose annual composition shall not be less than 20*l.* may agree with the respective commissioners aforesaid, for the payment of his composition money into the bank of England, or to the receiver general, or his lawful deputy, for the county or division where his composition money shall be payable, by half-yearly instalments at the times and in the manner prescribed in this act; and all such half-yearly payments shall be made in equal portions on or before the 1st day of October, and the 1st day of April in each year; and with respect to payments to be made to the receiver general or his deputy, to require a receipt acknowledging such payments, at the cost and charge of the persons making such payments; and in every such case the said receiver general or his deputy as aforesaid, shall give the said persons a receipt as aforesaid, specifying therein the name of the person compounding as aforesaid, and the parish or place mentioned in the certificate of composition; which receipts shall be delivered over to the collectors or one of them, of the parish or place where the assessment referred to by the certificate of composition shall have been made, by an indorsement under the hand of the person so compounding and paying, and shall be received by such collectors or collector as cash, and allowed as such by every receiver general or his deputy, in his accounts with such collector.

The bank shall open an account with the commissioners of the

treasury; and the cashier of the bank who shall receive any money tendered to him in payment of not less than one moiety of the money annually payable on any composition, shall enter the same in the book to be provided for that purpose; and the said cashier shall give the person paying the same a certificate of such payment, specifying therein the number of half-yearly instalments thereby discharged, and referring therein to the names or name of the persons or person so compounding, and the county and division mentioned in the certificate of composition then produced; provided always, that it shall be lawful for any person so authorized as aforesaid, to pay in advance to the governor and company of the bank of England, or to their cashiers, any sum of money compounded for as aforesaid, and payable for the term of one whole year, and to require a certificate acknowledging such payment; and it shall be lawful for the cashiers on production of the certificate of composition at the time of payment of the said duty in advance, (all sums then payable on such composition for any former year or instalment being first satisfied) to make an allowance out of the sum so paid in advance, at the rate of 3*l.* per cent. per annum; and all such certificates made out by the cashiers as aforesaid, being indorsed and delivered by the person so compounding, to the collectors or one of them, of the parish or place where the assessment shall have been made, shall be received by them as cash, in satisfaction of the condition of such certificate, and allowed to them in their accounts with the receiver general and his deputy as aforesaid.

The assessors of assessed taxes shall deliver the prescribed notices to all parties assessed in the last year; together with forms to be used in applications to compound. Persons desirous to compound may send their applications to the clerks of the commissioners, who are to summon the commissioners to take the applications into consideration.

The surveyors shall examine the assessments for the last year on persons applying to compound, and their returns for the present year; and if such surveyor shall find that any person who shall have applied to compound, hath removed from the dwelling-house charged in the last assessment, or hath returned any additional establishment as chargeable for the present year, so as to increase the amount of his assessment for the present year, beyond the amount charged in the preceding year, or hath not made any return, or hath made an undue return for the present year, it shall be lawful for the said surveyor to certify the same to the said commissioners with his objections; and no composition shall be entered into in respect of the dwelling-house from which the person applying to compound hath removed; nor with any person who hath not made a due return of all articles, matters, and things chargeable upon him for the present year; and in case such due return shall have been made, then no such composition shall be entered into, without adding to the amount of the last year's assessment the additional establishment chargeable in the present year, and cal-



culating the additional rate payable under this act on such aggregate amount.

Upon every composition entered into after the 1st day of October, 1819, there shall be paid one moiety of the annual amount, within ten days after the date of the certificate; and no such composition shall be entered into after the 31st day of the same month, nor after the person applying for the same shall have received a notice of an increased charge; nor after any appeal from the amount of the first assessment charged on the person so applying to compound for the present year.

Upon all applications to compound under this act, which shall not be objected to by the surveyor as aforesaid, the clerks to the commissioners shall prepare the certificates of composition to be signed by the commissioners and parties compounding.

All assessments to cease on persons compounding, except as before excepted.

On compositions not duly paid at the times prescribed. Collectors may distrain for the money in arrear, with 1s. in the pound for their own use, and all costs and charges.

Assessed taxes, extracted from the schedules of the various acts of parliament by which they are imposed:

#### I. DUTY ON MALE SERVANTS.

Schedule (C. No. 1.) of the Duties annually payable for every Male Servant retained or employed by any person in the several capacities mentioned herein.

NUMBER OF SERVANTS.	Amount of	Additional	Total
	Duty for each Ser- vant, 48 G. 3. c 55.	Duty, 52 Geo. 3. c. 93.	
	<i>L. s. d.</i>	<i>L. s. d.</i>	<i>L. s. d.</i>
For 1 servant .....	2 4 0	0 4 0	2 8 0
2 do. ....	2 16 0	0 6 0	3 2 0
3 do. ....	3 7 0	0 9 0	3 16 0
4 do. ....	3 18 0	0 9 0	4 7 0
5 do. ....	4 9 0	0 9 0	4 18 0
6 do. ....	4 14 0	0 9 0	5 3 0
7 do. ....	4 16 0	0 9 0	5 5 0
8 do. ....	5 3 0	0 9 0	5 12 0
9 do. ....	5 12 0	0 10 0	6 2 0
10 do. ....	6 3 0	0 10 0	6 13 0
11 do. and upwards .....	7 1 0	0 12 0	7 13 0
For every such servant retained as employed by any male persons, never having been married, over and above the before mentioned duties, the further sum of .....	1 14 0	0 6 0	2 0 0

Schedule (C. No. 2.) contains the Duties payable for Male Servants retained or employed in the several capacities herein mentioned.

For every gardener or person employed to work in any garden, under any person chargeable to the duties mentioned in the sche-

dule (C. No. 1): (and for every gardener who shall have contracted for the keeping of any garden, wherein the constant labour of one person shall not be necessary, 50 *Geo. 3. c. 104*) the sum of 6s. Additional duty, 52 *Geo. 3. c. 93. 4s.*—Total amount, 10s.

To be paid by each person in whose garden such person shall be employed.

*Exemptions from the Duties as set forth in Schedule (C.)  
No. 1 and 2.*

Any person employed by the day or week to work as a day labourer, at the usual rate of wages for day labourers in agriculture, in any garden belonging to a dwelling-house, being a farm-house, and exempted as such from the duties on houses, or in any garden belonging to a dwelling-house not chargeable to the duties mentioned in the said schedule, such garden not requiring the constant labour of one such labourer.

Schedule (C. No. 3.) *Duties payable annually for every Male Person or Servant retained or employed in the several capacities herein mentioned.*

For every male person employed by any merchant or trader as a traveller or rider, the following duties, viz.

——— Where one and no more shall be so employed, 48 *Geo. 3. c. 55. 2l. 8s.*—Additional duty, 52 *Geo. 3. c. 93. 12s.*—Total amount, 3l.

——— And where more than one shall be so employed, for each, 48 *Geo. 3. c. 55. 3l. 5s.*—Additional duty, 52 *Geo. 3. c. 93. 1l. 10s.*—Total amount, 5l.

For every male person employed by any person in trade, or exercising any profession whatever, as a clerk or book-keeper, or office-keeper, except apprentices, where no premium, or a premium less in value than the sum of 20l. has been paid or contracted for with such apprentice, the duties following, viz.

——— Where one and no more shall be so employed, 48 *Geo. 3. c. 55. 1l. 4s.*—Additional duty, 52 *Geo. 3. c. 93. 16s.*—Total amount, 2l.

——— And where more than one shall be so employed, for each, 48 *Geo. 3. c. 55. 2l. 8s.*—Additional duty, 52 *Geo. 3. c. 93. 12s.*—Total amount, 3l.

For every male person employed as a steward, bailiff, overseer, or manager, or clerk under a steward, bailiff, overseer, or manager, 52 *Geo. 3. c. 93. 2l.*

For every male person employed by any person in trade as a shopman, for the purpose of exposing to sale, or selling goods, wares, or merchandize in such shop or warehouse, whether by wholesale or retail; and every male person employed as a warehouseman, porter or cellarman in such shop or warehouse, except apprentices, 48 *Geo. 3. cap. 55. 2l. 4s.*—Additional duty, 52 *Geo. 3. c. 93. 16s.*—Total amount, 3l.

And for every male person so employed, where the duty by the former act shall be chargeable, 52 *Geo. 3. c. 93. 2l.*

The said duties to be paid by the employer, and to extend to



every body politic or corporate, and to every society, fraternity, or partnership, although not corporate; and to every manufacture or concern (except husbandry) whereby the employers shall seek a profit.

For every male servant employed as a waiter (except occasional waiters, above the ordinary number usually kept in any taverns, coffee-houses, or in hotels or lodging-houses, being eating or victualling houses, 48 Geo. 3. c. 55 the sum of 2*l.* 5*s.*—Additional duty, 52 Geo. 3. c. 93. 15*s.*—Total amount, 3*l.*

And for every male person so employed, when the duty by the former act shall not be chargeable, 52 Geo. 3. c. 93. 3*l.*

Occasional waiters for six calendar months, 52 Geo. 3. c. 93. 2*l.*

Occasional waiters employed for less than six calendar months, 52 Geo. 3. c. 93. 1*l.*

Every male person (not being a servant) employed as an occasional waiter in any private house, not less than six months within the year, 52 Geo. 3. c. 93. 1*l.*

For every male servant retained by any stable-keeper to take care of any horse, mare, or gelding, of any other person, kept for the purpose of racing or running, for any plate, prize, sum of money, or other thing, or any horse in training for any of the said purposes, whereby such stable-keeper shall gain a livelihood or profit, 48 Geo. 3. c. 55. 1*l.* 4*s.*—Additional duty, 52 Geo. 3. c. 93. 16*s.* Total amount, 2*l.*

And for every one not chargeable by the former act, 52 G. 3. c. 93. 2*l.*

For every male servant *bona fide* retained for the purposes of husbandry, manufacture, or trade, by which the master or mistress shall gain a livelihood or profit, and at any time employed in any domestic employment in any of the capacities in the schedule (C.) No. 1. and not chargeable to the duties in the said schedule, 48 Geo. 3. c. 55. 6*s.*—Additional duty, 52 Geo. 3. c. 93. 4*s.*—Total amount, 10*s.*

For every one so employed, who shall not be chargeable by the former act, 52 Geo. 3. c. 93. 10*s.*

For every male servant *bona fide* retained for the purposes of husbandry, or any manufacture or trade by which the master or mistress shall gain a livelihood or profit, and at any time employed in the capacity of a groom, stable boy, or helper in the stables, where the master or mistress shall be chargeable for one horse, and no more, to the duty on horses kept for the purposes of riding, or drawing a taxed cart, or to the duty on such taxed cart, and not on any other carriage, 48 Geo. 3. 55. 6*s.* Additional duty, 52 Geo. 3. c. 93. 4*s.* Total amount, 10*s.*

The said last mentioned duties to be paid by employer, master, or mistress.

And for every male person so employed, where the duty by the former act shall not be chargeable, 52 Geo. 3. c. 93. 10*s.*

For every male person employed in any of the capacities in (C. 1.) and not being a servant to his employer, where such employer shall be chargeable to the duties in (C. 1.) or (D. 1. and 2.) or for more than one horse, 52 Geo. 3. c. 93. 2*l.* 8*s.*

And where such employer shall not be so chargeable, 52 Geo. 3. c. 93. 11.

EXEMPTIONS from the additional duties of 52 Geo. 3. c. 93. Apprentices for seven years, where no premium shall have been given.

Schedule (C. No. 4.) *Duties payable on Servants let to hire.*

For every coachman, groom, postillion, or helper, kept for the purpose of being let on hire for less than one year, and in such manner that the stamp-office duty on horses let to hire shall not be payable on every such letting by any post-master, innkeeper, or other person, licensed to let post horses, or by any coachmaker or maker of such carriages, or other person, the annual sum of 2*l.* 4*s.*; 52 Geo. 3. c. 93. 6*s.* Total, 3*l.*

And for every coachman kept for the purpose of driving any stage coach, and for every guard, 52 Geo. 3. c. 93. 2*l.* 10*s.*

The said duty to be paid by the persons letting the same to hire; but if the person hiring the same shall not make a return thereof, then the progressive duty made payable by Schedule (C.) No. 1. shall be chargeable in respect of every such servant on the person hiring, and making default, according to the number of servants retained by him, and he shall also forfeit for such default 50*l.* by 43 Geo. 3. c. 27.

## II. NEW DUTY ON CARRIAGES.

Schedule (D.) No. 1. *Duties payable on all Carriages of any of the descriptions mentioned herein.*

NUMBER OF CARRIAGES.	Duty for each, 48 Geo. 3. c. 55.	Additional duty, 52 Geo. 3. c. 93.	Total Amount.
Carriages with four wheels:	<i>L. s. d.</i>	<i>L. s. d.</i>	<i>L. s. d.</i>
For 1 such carriage, annually .....	11 5 0	0 15 0	12 0 0
2 do. ....	12 7 0	0 13 0	13 0 0
3 do. ....	13 10 0	0 10 0	14 0 0
4 do. ....	14 0 0	1 0 0	15 0 0
5 do. ....	14 12 0	1 3 0	15 15 0
6 do. ....	15 3 0	1 5 0	16 8 0
7 do. ....	15 14 0	1 6 0	17 0 0
8 do. ....	16 5 0	1 7 0	17 12 0
9 do. and upwards .....	16 16 0	1 7 0	18 3 0
And for every additional body successively used on the same carriage or number of wheels, the sum of .....	5 12 0	0 14 0	6 6 0

Schedule (D.) No. 2. *Duties for Carriages with less than four wheels.*

For every such carriage (and also taxed carts, kept and used by persons assessed to these duties,) drawn by one horse, mare, or gelding, 48 Geo. 3. c. 55. 5*l.* 18*s.*—Additional duty, 52 Geo. 3. c. 93. 12*s.* Total amount, 6*l.* 10*s.*

And for every such carriage not chargeable under the former act, 52 Geo. 3. c. 93. 6*l.* 10*s.*



Drawn by two or more horses, 48 *Geo. 3. c. 55. 8l. 5s.*—Additional duty, 52 *Geo. 3. c. 93. 15s.* Total amount, 9*l.*

And for every additional body, successively used on the same carriage or number of wheels, the further sum of 2*l. 16s.* Additional duty, 52 *Geo. 3. c. 93. 7s.* Total amount, 3*l. 3s.*

*Rules for charging the said Duties on the two foregoing Schedules.*

1. The said duties to be charged for every coach, berlin, landau, chariot, calash, chaise marine, chaise, sociable, or caravan with four wheels; and for every calash, chaise marine, chaise curricule, chair, or car, with less than four wheels, or any number thereof respectively; and for every other carriage with four wheels, or with less than four wheels, used for the like purposes, by whatever names the same shall be called, kept by any persons for their own use, or hired by the year, or any longer period; and upon all such carriages kept to be let out to hire, or to carry passengers for hire (except such carriages for which other duties are herein-after made payable) and which duties shall be paid by the persons keeping such carriages, and shall be chargeable upon the body, or, if more than one, upon the bodies of such carriages, according to the number thereof successively used on the same carriage of wheels, and not in respect of the wheels thereof, or any other part of such carriage to which the wheels shall be attached.

Schedule (D.) No. 3. *Duties for Carriages hired for any period of time less than one year, or kept to be let on hire, or to carry passengers:*

And for every carriage kept for the purpose of being let to hire, with horses to be used therewith, for any period not exceeding twenty-eight days, so that the stamp office duty on horses let to hire, shall be paid, and whereon the name and place of abode of the person licensed shall be painted.—[if such carriage shall have four wheels.]

And also if such carriage shall have less than four wheels, the like sums as mentioned in schedule (D.) No. 2.

And for every coach, diligence, caravan, or chaise with four wheels or more, or other carriage with four wheels or more, by whatever name the same shall be called, which shall be kept and employed as a public stage coach or carriage, for the purpose of conveying passengers by hire, to and from different places (or as a post chaise, 52 *Geo. 3. c. 93.*), and which shall be duly entered as such with the commissioners of stamp duties, 48 *Geo. 3. c. 55. 9l. 9s.*—Additional duty, 52 *Geo. 3. c. 93. 1l. 1s.* Total amount, 10*l. 10s.*

All which last mentioned duties shall be paid by the persons keeping the same.

For every carriage kept for the purpose of being let to hire for any period of time less than one year, and in such manner that the said stamp office duty shall not be payable on such letting, and also for every such carriage, kept for the purpose of being let to hire without horses by any coachmaker, 52 *Geo. 3. c. 93.* if such car-

riage shall have four wheels, the annual sum of 11*l.* 5*s.*—Additional duty, 52 *Geo.* 3. *c.* 93. 15*s.* Total amount, 12*l.*

The last duty to be paid by the persons keeping such carriages, and if a due return thereof shall not be made, the progressive duty as set forth in schedule (D.) No. 1. shall be chargeable in respect of every such carriage on the person making such default, who shall also be subject to a penalty of 50*l.* 43 *Geo.* 8. *c.* 27.

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Schedule (D.) No. 4. *Duty for Taxed Carts.*

For every carriage with less than four wheels, to be drawn by one horse, built wholly of wood and iron, without any covering other than a tilted covering, and without any lining or springs, and with a fixed seat, without slings or braces, and without any ornament whatever, other than a paint of a dark colour, and which shall have the words "A Taxed Cart," and the owner's christian and surname, and abode, painted on the outside of the back part of such carriage, and the price of which, repairs excepted, shall not have exceeded 15*l.* and which shall not at any time be used with a covered or stuffed seat, or with a covered footboard or apron, there shall be charged the annual sum (50 *Geo.* 3. *c.* 104.) of 11*l.* 6*s.* 6*d.*—Additional duty, 52 *Geo.* 3. *c.* 93. 2*s.* 6*d.* Total amount, 11*l.* 9*s.*

For every taxed cart, built with a spring or springs, the original price of which shall not have exceeded 21*l.* or which shall be used with a stuffed seat or cushion, or with a covered footboard or apron, there shall be charged the annual sum of 2*l.* 10*s.*—Additional duty, 52 *Geo.* 3. *c.* 93. 5*s.* Total amount, 2*l.* 15*s.*

*Taxed carts with less than four wheels, used by persons assessed to the duty on carriages.* For every such carriage with less than four wheels, if drawn by one horse, there shall be charged for every such carriage, the annual sum (50 *Geo.* 3. *c.* 104.) of 5*l.* 18*s.*—Additional duty, 52 *Geo.* 3. *c.* 93. 12*s.*—Total amount, 6*l.* 10*s.*

Upon every maker of taxed carts not assessed as a coachmaker, of the value limited, there shall be charged the annual duty of 2*s.* 6*d.*—Additional duty, 52 *Geo.* 3. *c.* 93. 6*d.* Total amount, 3*s.*

And where not chargeable by the former act, 52 *Geo.* 3. *c.* 93. 3*s.*

By every such maker, for every such carriage which he shall make, build, or construct for sale, the sum of 2*s.* 6*d.*—Additional duty, 52 *Geo.* 3. *c.* 93. 6*d.* Total amount, 3*s.*

And where not chargeable under the former act, 52 *Geo.* 3. *c.* 93. 3*s.*

Except carriages built and constructed as aforesaid, belonging to any person who are liable to be assessed to the before mentioned duties in respect of a four-wheeled carriage, or who are liable to be assessed to the duties on male servants in respect of two, which persons respectively shall be charged for such carriages, although built and constructed as aforesaid, at the rate prescribed in schedule (D.) No. 2. *on carriages with less than four wheels.*

Every cart having the name and residence of the owner, and the words "Common Stage Cart" thereon, and kept without fraud to



be used wholly in the affairs of husbandry, or in the carriage of goods in the course of trade, although the owner or his servants may occasionally ride therein when laden, or when returning, and although used for the purpose of riding therein or thereon, on the occasions and in the manner herein mentioned; that is to say, for the purpose of procuring medical assistance for the owner or any of his family, or for the purpose of carrying goods to or bringing back goods from market, or carrying the owner or any of his family to or from any place of public worship, or to or from any election in parliament, or to or from any courts of justice, or to or from any meeting of commissioners of taxes, shall be exempted, provided such cart shall not have been let to hire for any of the said purposes.

*Exemptions from the several Duties in Schedules (D.) No. 1, 2, 3, and 4.*—Any carriages belonging to his majesty, or any of the royal family.—Any hackney coach, any carriage kept by any coachmaker *bona fide* for the purpose of sale, or of being lent to any person whose carriage being of the same description, shall be then making, mending, or repairing, and during the time the same shall be necessarily under repair; provided such carriage shall not, whilst in the possession of such coachmaker, be employed for his own use, or let to hire, or otherwise lent than as aforesaid.

Any cart which shall be kept truly and without fraud, to be used wholly in the affairs of husbandry, or in the carriage of goods in the course of trade, and whereon the name and residence of the owner, and the words "Common Stage Cart" shall be painted, although the owner, or his servants, may occasionally ride therein or thereon when laden, or when returning from any place to which, or when going to any place from which any load shall have been or be to be carried in the course of husbandry or trade, or for conveying the owners or their families to or from any place of divine worship on Sunday, or on Christmas day, or on Good Friday, or any day appointed for a public fast or thanksgiving, or for carrying persons going to or returning from any election of members in parliament, not used for any other purpose, or not let to hire.

Schedule (D.) No. 5. *Duties payable by Coachmakers and Makers of other Carriages, chargeable with duty by this act, and on carriages made or sold as herein mentioned.*

By every person who shall carry on the trade of a coachmaker, or maker of any carriages, chargeable with duty by this act, in that part of Great Britain aforesaid, the annual duty of 10s.

By every such coachmaker, for every such carriage with four wheels, which he shall make, build, or construct for sale, 1l. 5s.

And for every such carriage with two wheels, 12s. 6d.

Schedule (D.) No. 6. *Duties payable by persons selling any carriages, chargeable with duty by this act, by auction, or on commission.*

By every person who shall sell any carriage chargeable with duty by this act, by way of auction or on commission, for or in

expectation of profit or reward, in Great Britain, the annual duty of 10s.

By every such person for every such carriage with four wheels which he shall sell by auction or on commission, for or in expectation of profit or reward as aforesaid, 1*l.* 5*s.*

And for every such carriage with two wheels, except taxed carts, 12*s.* 6*d.*

And for every such taxed cart, 3*s.*

### III. NEW DUTY ON PLEASURE HORSES.

Schedule (E.) No. 1. *Duties payable for all horses, mares, and geldings, kept or used by any person or persons for the purpose of riding, or drawing any carriage chargeable with duty by schedule (D.) 52 Geo. 3. c. 93.*

#### NUMBER OF HORSES.

	L. s. d.		L. s. d.
For 1 such horse, mare, or gelding, each.....	2 17 6	For 11 such horse, mare, or gelding, each.....	6 7 0
2.....	4 14 6	12.....	6 7 0
3.....	5 4 0	13.....	6 7 6
4.....	5 10 0	14.....	6 7 6
5.....	5 11 6	15.....	6 7 6
6.....	5 16 0	16.....	6 7 6
7.....	5 19 6	17.....	6 8 0
8.....	5 19 6	18.....	6 9 0
9.....	6 1 6	19.....	6 10 0
10.....	6 7 0	20 and upwards.....	6 12 0

The said duties to be paid annually for every horse, mare, or gelding, used on any occasion for the purpose of riding, or of drawing any carriage for which duty is payable, or hired by the year, or any longer period, and to be paid by the person using the same, except as after mentioned.

#### *Exemptions from the said Duties.*

1. Any person who shall keep any horse, which shall be used truly and without fraud for the purpose of husbandry, or of drawing any carriage (except such carriages as are liable to duty) or carrying burdens in the course of the trade or occupation of the person to whom such horse shall belong, although such horse shall be used for riding in the manner herein-after mentioned; that is to say, when returning from any place to which any load shall have been drawn, or in going to any place from whence any load shall be to be brought back, or on account of such horse having been used for riding to procure medical assistance, or to or from market, or to or from any place of public worship, or to or from any election of members of parliament, or to or from any courts of justice, or to or from any meeting of the commissioners of taxes; provided such horse shall not, on any occasion, be used for any other purpose save as aforesaid.

2. Any person occupying a farm as tenant at rack-rent, the rent of which shall be less than 70*l.* a year, and making a livelihood



solely thereby; or any person occupying any estate, on any other tenure than as tenant at rack-rent solely, or such estate together with a farm at rack-rent, the value of which in the whole shall be less than equivalent to a farm at the rack-rent of 70*l.* a year (reckoning the value of every estate occupied by the owner, or on any tenure other than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent) and making a livelihood solely by such his own estate, or by such estate and farm jointly, and using occasionally for the purpose of riding any horse which shall be *bona fide* kept for the purposes of husbandry.

3. Any person occupying a farm, and making a livelihood solely thereby, or any person carrying on a trade, and making a livelihood solely thereby; or making a livelihood by such occupation and trade jointly; or any ecclesiastical person not possessed of an annual income of 100*l.* or upwards, whether arising from any ecclesiastical preferment or otherwise, for one horse, used only for the purpose of drawing any carriage liable to the duty on taxed carts.

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Schedule (E. No. 2.) *Duties payable on Horses let to hire.*

For every horse, mare, or gelding, let to hire for the purpose of riding, or of drawing any such carriage as aforesaid, for any period of time less than one year, in any manner so that the stamp office duty, payable on horses let to hire, shall not be payable, the sum of 2*l.* 17*s.* 6*d.*

To be charged annually on the person letting the same; but if a due return thereof shall not be made by the hirer, the progressive duty, set forth in Schedule (E. No. 1.) shall be chargeable in respect of every such horse, on the person hiring the same, and making such default, and shall also for such default, forfeit 50*l.*

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Schedule (E. No. 3.) *Duties payable on Horses kept for the purpose of racing or running for any plate, prize, or sum of money, or other thing, or kept in training for any of the said purposes.*

For every horse, mare, or gelding, *bona fide* kept for the purpose of racing or running for any plate, prize, or sum of money, or other thing, or kept in training for any of the said purposes, whether in the stables of the proprietor, or of any other person, the sum of 2*l.* 17*s.* 6*d.*

The said duty to be charged annually on the persons having the custody, charge, or management of such horses.

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IV. NEW DUTY on DRAUGHT HORSES and MULES.

Schedule (F. No. 1.) *Duties payable for all horses, mares, and geldings, not charged with any duty according to the schedule (E.) and also mules.*

For every horse, mare, or gelding, thirteen hands high, 52 *Geo.* 3. c. 93. not chargeable with any duty, according to the schedule (E. No. 1, 2, and 3.) as aforesaid, and every mule, except in the cases herein-after mentioned, wherein other duties are made payable, the sum of 1*l.* 1*s.* If under thirteen, 17*s.*

Schedule (F. No. 2.) *Duties payable on husbandry horses, in the cases herein-after mentioned.*

For every horse, mare, or gelding, of the height of thirteen hands or more, *bona fide* kept and used for the sole purposes of husbandry, except as after mentioned, 52 Geo. 3. c. 93. 17s. 6d.

Any person occupying a farm at rack-rent, the rent of which shall be less than 20*l.* a year, and making a livelihood solely thereby, or occupying any estate on any other tenure than as tenant at rack-rent solely, or such other estate together with a farm at rack-rent, the value of which in the whole shall be less than equivalent to a farm at the rack-rent of 20*l.* a year, reckoning the value of every estate occupied by the owner, or on any tenure other than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent, and making a livelihood solely by such his own estate, or by such estate and farm jointly or principally thereby, and likewise a profit by any trade or employment, and keeping not more than two horses, geldings, or mules, *bona fide* for the purpose of such occupation, shall be charged for each, the sum of 3*s.*

Any person occupying a farm at rack-rent in Wales or Scotland, rent of which shall be less than 10*l.* sterling a year, and making a livelihood principally thereby, or occupying any estate on any other tenure than as tenant at rack-rent, or such other estate, together with a farm at rack-rent, the value of which in the whole shall be less than equivalent to a farm at the rack-rent of 10*l.* sterling a year, reckoning the value of every estate occupied by the owner thereof or on any other tenure than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent, and making a livelihood principally thereby, and likewise a profit by any trade or employment, and keeping not more than two horses *bona fide* for the purposes of such occupation, and of such trade or employment, jointly, or either of them separately, shall be charged for each of such two horses, or mules, the sum of 3*s.*

*Rules for charging the Duties as set forth in Schedule (F. No. 1 and 2.)*

The said duties to be charged annually, and paid by the persons keeping or using such horses or mules, and to be payable for every horse and mule which shall not be chargeable with any duty according to the preceding schedule, marked (E.)

*Exemptions from the Duties in Schedule (F. No. 1 and 2.)*

Any person whatever for any horse, mare, or gelding, which shall not at any time whatever have been used for any purpose of labour or otherwise.

*Exemptions from the several Duties as set forth in the several Schedules marked (E.) and (F.)*

Any horse belonging to his majesty or any of the royal family. Any postmaster, or person, licensed by the commissioners of the duties on stamps, in respect of any horse let to hire, in any manner where the stamp office duty payable on horses let to hire shall be paid on each letting, and which shall not be used for any other pur-



pose. Any person licensed to keep any public stage coach, in respect of any horse which shall be solely used by such person in drawing such stage coach from place to place for hire. Any person licensed to keep any hackney coach, for any horses kept for the purpose of drawing such coach, in respect of the duties in Schedule (E.) No. 1. and for two horses, and no more, kept for the purpose of drawing each coach so licensed in respect of the duties in Schedule (F.) No. 1. Any dealer in horses assessed to the duties on dealers for any horse, mare, or gelding, kept *bona fide* for sale, and not kept or used for any other purpose. Any person who, on account of poverty, shall be discharged from the assessment made in respect of his dwelling-house, for any horse; provided such person shall not keep more than one, and the same shall not be let to hire. Any rector, vicar, or curate, actually doing duty in the church or chapel of which he is rector, vicar, or curate, who shall not be possessed of an income of 60*l.* per annum from ecclesiastical preferment or otherwise, and who shall not keep more than one horse for the purpose of riding, except such person who shall occasionally perform the duty appertaining to any rector, vicar, or curate, without being the regular officiating minister of the parish. Every person serving in any corps of yeomanry or volunteers, who shall have attended the exercise of his corps, five days of muster and exercise at least in the course of the preceding year, unless prevented by actual sickness, and who shall be returned in the muster roll, as having used any horse for such service, shall be exempted from the payment of the duties in respect of such one horse. Any non-commissioned officer or private of any of the regiments of the cavalry, or in the artillery, for any horse used in his majesty's service.

#### NEW DUTY ON DOGS.

##### Schedule (G.) *Duties on Dogs.*

For every greyhound, kept by any person, whether his property or not, 52 *Geo.* 3. c. 93. 11.

For every hound, pointer, setting-dog, spaniel, lurcher, or terrier, and for every dog of whatever denomination the same may be, except greyhounds, where any person shall keep two or more dogs, for his own use, or the use of any other person, the annual sum of 14*s.*

For every dog not being such as aforesaid, kept by any person having one such dog and no more, whether the same be kept for his own use, or the use of any other person, the annual sum of 8*s.*

The said duties to be paid by the person keeping such dogs.

##### *Exemptions from the Duties in (G.)*

Any dog belonging to his majesty or any of the royal family. Any person who, on account of poverty, shall be discharged from the assessment of his dwelling house, and having one dog, and no more, the same not being a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier. Any person in respect of a dog or whelp, which at the time of returning the list, not actually of the

age of six calendar months. Any person in respect of the whole number of hounds by him kept, who shall compound for the same in any year within thirty days after the 5th of April, in pursuance of notice given to the collector of his intention so to do, and on payment of the full sum of 36*l.* sterling to such collector, for which a receipt shall be given within the period before mentioned. And where two or more join to keep the same and not compound, they shall be chargeable for each hound.

#### VI. NEW DUTIES ON HORSE DEALERS.

##### *Schedule (H.) Duties payable by Horse Dealers.*

Every person who shall use or exercise the trade and business of horse dealer within London and Westminster, and the liberties of the same respectively, the parishes of St. Mary-le-bone and St. Pancras, the weekly bills of mortality, or the borough of Southwark, in the county of Surry, the annual duty of 25*l.*

Every person who shall use the trade or business in any other part of Great Britain, the annual duty of 12*l.* 10*s.*

#### VII. NEW DUTY ON HAIR POWDER.

##### *Schedule (I.) Duties payable by persons in respect of Hair Powder used or worn by them.*

By every person who shall have used or worn any hair powder within the period limited by this act, the annual sum of 1*l.* 3*s.* 6*d.*

##### *Rules for charging the said Duties.*

1. The said duty to every sort of hair powder used or worn by person as any article of, or in, or about, his or her dress, to be assessed upon and paid by the person having used or worn the same within the year preceding the term for which the assessment ought to be made, except as hereafter mentioned.

2. The unmarried daughters of any person shall not be chargeable, or be required to make any return, provided the parent shall have more than two unmarried, and shall have given an account of the whole number, and shall have required to be assessed for the whole number by one assessment, in which case every such parent shall be assessed in respect of the whole number of such daughters in twice the sum payable on any single person, having worn hair powder, which shall exempt the whole number from the said duties.

3. The master or mistress of any servant who shall have declared his intention to pay the duty in respect of such servant, and shall have given a true account of all the servants kept, setting forth their capacities, shall be charged for such servant, and every such servant shall be exempted from the said duties, during his continuance in the same service; and also every servant who shall come into the service of such master or mistress in the room of such servant named to serve in the same capacity during the year; and no servant named in such lists, or any servant serving such master or mistress in any capacity mentioned in such lists, shall



during the year, be required to make any return, or to pay the duties.

Any of the royal family, and any menial servants of his majesty or any of the royal family. Any officer in actual employ in the navy, under the rank of commander, or any officer holding a commission in the navy under this said rank, who shall be employed on the establishment of Greenwich, or any subaltern or non-commissioned officer or private in the army, artillery, militia, marines, or corps of engineers, or any person inrolled and actually serving in any volunteer corps whether infantry or cavalry. Any clergyman who shall not be possessed of an annual income of 100*l.* or upwards, whether arising from ecclesiastical preferment or otherwise; or any preacher of any congregation of dissenters, or any person dissenting from the church of England in holy orders, or pretended holy orders, entitled to the benefit to the several toleration acts in favour of dissenters and papists, and who shall not be possessed of an annual income of 100*l.* or upwards, however arising; and the income arising from benefices shall be estimated on the average amount, computed on seven years next preceding.

#### VIII. NEW DUTY ON ARMORIAL BEARINGS.

Schedule (K.) *Duties payable by persons in respect of any Armorial Bearing or Ensign, used or worn by them, by whatever name the same may be called, viz.*

By every such person chargeable with any duty made payable by this act for any coach or other carriage, the annual sum of 2*l.* 8*s.*

By every such person not so chargeable, but who shall be chargeable to any of the duties on inhabited houses, or windows, the annual sum of 1*l.* 4*s.*

By every such person not chargeable for any such coach or other carriage not being chargeable to the said duties on houses or windows, the annual sum of 12*s.*

The said duties to be paid by every person having used, or caused to be used, any armorial bearing or ensign within the year preceding the term for which the assessment ought to be made, and to extend to every person who within the said period shall have been possessed of, or shall have kept or had any coach or other carriage chargeable with the duty by this act, or any seal, plate, or other article, on which any armorial bearing or ensign shall have been, during the said period, painted, engraved, marked, or affixed, and whether registered in the college of arms or not; the persons liable to be assessed must insert their names in the lists, delivered by the assessors annually, under the penalty of 50*l.*

##### *Exemptions from the said Duties.*

The royal family, or any person who, by right of office or by appointment, have worn or used any of the arms or insignia worn or used by the royal family, or used in any city, borough, or town corporate.

## IX. NEW DUTIES ON PERSONS KILLING GAME.

Schedule (L.) *Duties in respect of killing Game.*

By every person (except of the royal family) who shall use any dog, gun, net, or other engine, for the purpose of killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, in any part of Great Britain.

If such person shall be a servant to any person duly charged in respect of such servant to the duties granted on servants, and shall use any dog, gun, net, or other engine, for any of the purposes before mentioned, upon any manor or royalty in England, Wales, or Berwick-upon-Tweed, or upon any lands in Scotland, by virtue of any deputation or appointment, duly registered or entered as game-keeper thereto, (and also where the old duty was not chargeable, 52 G. 3. c. 93.) there shall be charged the annual sum of 1*l.* 5*s.*

And if such person as last aforesaid, shall not be a servant for whom the said duties on servants shall be charged, there shall be charged the annual sum of 3*l.* 13*s.* 6*d.*

By every other person who shall use any dog, gun, net, or other engine, for any of the purposes before mentioned, there shall be charged the annual sum of 3*l.* 13*s.*

*Exemptions from the above Duties.*

1. The taking or destroying of woodcocks and snipes with nets or springes.

2. The taking or destroying of conies in warrens, or in any inclosed grounds whatever, or by any person in lands in his own occupations, either by himself or by his direction or command.

These duties, in respect of killing game, are to be paid to the collector of the parish, and a certificate of the payment, filed with the clerk of the peace, who is also to deliver his certificate thereof to the party. They only remain in force until the 5th of April in each year after being issued; any person found in the exercise of any act for which the duty ought to be paid, not producing the certificate, or refusing to declare his name and place of abode, is to forfeit 20*l.*; and sporting without such certificate he shall also forfeit 20*l.* and be moreover liable to the full duty of 3*l.* 13*s.* 6*d.* The penalties are recoverable before one justice by distress and sale. *Allowances made on account of Children out of the assessed Taxes.*

By the 46 G. 3. c. 34. and 52 G. 3. c. 147. every person having more than two children born in lawful wedlock, and *bona fide* maintained at the expense of such person, is entitled for every child above two, to an allowance after the rate of 4*l.* per cent. on the amount of all assessments on such person by virtue of the assessed tax acts, if under 45*l.* per annum.

The children by any former marriage, either of the husband or wife, or of the husband or wife deceased, equally entitle the husband or wife or surviving husband or wife maintaining such children to the allowance, as his or her own children.

The allowance cannot be claimed in respect of any child who is personally charged to any of the said duties, or who is an householder.



The party liable to be assessed must cause the whole number of servants, carriages, horses, mules, and other articles chargeable on him under the said acts, of which a return by him is required, in the parish where he makes his claim, or the allowance cannot be granted. And if he has two or more dwelling-houses, he is to obtain a certificate of the amount of duties charged on him in respect of each dwelling-house not situate in the place where he makes the claim.

And if he is guilty of any fraud in making his claim, or delivers a false declaration, or a false certificate, he will forfeit 100*l*.

X. WINDOW AND HOUSE DUTIES.

By the 48 Geo. 3. c. 55. instead of the Duties granted by former acts, and hereby repealed, the following new and consolidated Duties shall be assessed, levied, and paid, from and after the 5th of April, 1808.

For every dwelling-house, together with the offices, which shall not contain more than six windows or lights, and not of the value of five pounds by the year, there shall be charged the annual sum of 6*s*. 6*d*.; but if the house is of such a value, or more, the annual sum of 8*s*. shall then be charged upon it.—In all cases whatsoever, the duty in Scotland is 2*s*. less.

The following table shows the several charges from 7 windows to 180.

Windows.		L.	s.	d.	Windows.		L.	s.	d.	
For every inhabited dwelling-house, containing	7 —	The annual sum of	1	0	0	37 —	The annual sum of	25	10	6
	8 —		1	13	0	38 —		26	7	0
	9 —		2	2	0	39 —		27	4	0
	10 —		2	16	0	40 to 44		28	17	6
	11 —		3	12	6	45 — 49		31	13	6
	12 —		4	9	6	50 — 54		34	10	0
	13 —		5	6	6	55 — 59		37	6	0
	14 —		6	3	6	60 — 64		39	15	6
	15 —		7	0	0	65 — 69		42	0	6
	16 —		7	17	0	70 — 74		44	5	0
	17 —		8	14	0	75 — 79		46	10	0
	18 —		9	10	6	80 — 84		48	15	0
	19 —		10	7	6	85 — 89		51	0	0
	20 —		11	4	6	90 — 94		53	4	0
	21 —		12	1	0	95 — 99		55	9	6
	22 —		12	18	0	100 — 109		58	17	0
	23 —		13	15	0	110 — 119		63	6	6
	24 —		14	11	6	120 — 129		67	16	6
25 —	15	8	6	130 — 139	72	6	0			
26 —	16	5	5	140 — 149	76	16	0			
27 —	17	2	6	150 — 159	81	5	6			
28 —	17	19	0	160 — 169	85	15	6			
29 —	18	16	0	170 — 179	90	5	0			
30 —	19	12	6	180 and upwards,	93	2	6			
31 —	20	9	6	and for each	} 0 3 0					
32 —	21	6	6	and every						
33 —	22	3	0	window						
34 —	23	0	0	above 180						
35 —	23	16	6							
36 —	24	13	6							

And for every inhabited house, worth (with the offices, &c.) 5*l.* and under 20*l.* yearly rent, the annual sum of 1*s.* 6*d.* in the pound—for every inhabited house, worth 20*l.* and under 40*l.* rent, 2*s.* 3*d.* in the pound—and for every inhabited house worth 40*l.* rent, or upwards, the annual sum of 2*s.* 10*d.* in the pound.

*Rules for charging windows.*

1. The said duties to be charged annually upon the occupier for one whole year from April 5, to be levied of such occupier, or his executors or administrators, except as after provided.

2. Where any change in the occupation shall take place after the assessments, then the duties charged on the occupier, shall be paid by the occupier, landlord, or owner, for the time being, without any new assessment, notwithstanding such change in occupation. But where a tenant shall quit, on the termination of a lease or demise, and shall have given notice thereof to the assessor, the duty shall be discharged for the remainder of that year, in case it shall appear to the commissioners at the end of such year, that such house shall have continued unoccupied for the remainder of such year.

3. Where any dwelling-house is let in different apartments, and shall be inhabited by two or more persons, the same shall be charged as if such house were inhabited by one only; and the landlord or owner shall be deemed to be the occupier, and charged.

4. Every house, the keeping of which is left to the care of any person or servant, shall be subject to the like duties as if it were inhabited by the owner or tenant; and, if such person shall not pay rates to the church and poor, the said duties shall be paid by the owners or tenants.

5. Every window, including the frame, partitions and divisions thereof, which by due admeasurement of the whole space on the aperture of the wall of the house or building, on the outside of such window, shall exceed 12 feet in height, or 4 feet 11 inches in breadth, and not less than 3 feet 6 inches high, shall be charged as two windows, except such as shall have been made of greater dimensions prior to the 5th of April, 1785; except also the windows in shops, workshops, and warehouses, and except the windows in the public room of any house licensed to sell ale, or other liquors by retail, used for the entertainment of guests; and the windows in farm houses especially exempted from the duties on houses.

6. Every window extending so far as to give light into more rooms, landings, or stories than one, shall be charged as so many separate windows.

7. When a partition or division between two or more windows fixed in one frame, is 12 inches in breadth, the window on each side shall be charged as a distinct window.

8. All skylights, and all windows in staircases, garrets, cellars, passages, and all other parts of dwelling-houses, to what use soever applied, shall be charged to the said duties.

9. Every window in any kitchen, cellar, scullery, buttery, pantry, larder, wash-house, laundry, bake-house, brew-house, or lodging



room, belonging to or occupied with any dwelling-house, whether the same shall or shall not be within, or contiguous to, or disjoined from, the body of such dwelling-house, shall also be charged to the said duties.

*Exemptions.* Houses belonging to his majesty, or any of the royal family, public offices, hospitals, charity schools, and poor houses, except such apartments as are occupied by the officers and servants, which are to be assessed as separate dwelling-houses; the windows in any room licensed for divine worship, and used for no other purpose; and the windows of dairy and cheese rooms, made of splines or wooden laths. And by the 50 G. 3. c. 104. any window in a room of a dwelling-house, wholly used for manufacture, and communicating with the dwelling-house internally, is also exempt.

TEMPLE. The Temple is well known to have taken its name from that gallant religious military order, the knights templars, who came into England in the reign of Stephen. Their first house was in Holborn, near the site of the present Southampton Street, and was called the Old Temple; but in the succeeding reign they began the foundation of a nobler structure, opposite the end of Chancery Lane, then called New Street, which, to distinguish it from the former, was called the New Temple. This occupied all that space of ground from the monastery of the Carmelites, or White Friars, in Fleet Street, westward to Essex House, without Temple Bar, where Essex Street now stands, and some part of that too, as appears by the first grant of it to Sir William Paget, by Henry VIII.

The knights templars were originally crusaders, who happening to be quartered in places adjacent to the Holy Temple at Jerusalem, in 1118, consecrated themselves to the service of religion by deeds of arms; Hugh Paganus, or Pain, Geoffrey de St. Audomare, or St. Omer's, and seven others, began the order, by binding themselves to live in chastity and obedience after the manner of the regular canons of St. Augustine, "and to renounce their own proper wills for ever." Their first profession was to protect such pilgrims as should come to visit the sepulchre from all wrong and violence on the road.

At first they had no settled habitation, subsisted on alms, and had only one horse between two of them; which latter circumstance they commemorated on their seal, till at length Baldwin king of Jerusalem granted them a residence near his palace. This gift the canons of the Holy Temple augmented, by assigning them a street to build their offices on; and the patriarch, king, and nobles, gave them certain revenues out of their lordships. Ten years afterwards they had a rule appointed them, by Pope Honorius II. and wore a white habit, to which, as their numbers increased, was added, by Eugenius, as a distinction, a cross of red cloth on the left shoulder; and on account of the vicinity of their original mansion to the temple at Jerusalem, they were called knights of the temple.

These knights, by their devotion and the fame of their gallant actions, soon became popular in all parts of Europe; noblemen of the first rank joined the order; they built numerous monasteries or temples, and were so enriched by the favour of princes and other great men, that at the time of their dissolution they were found to be possessed of sixteen thousand manors, besides other property. They entertained, in the most magnificent manner, the nobility, foreign ambassadors, and frequently the prince himself; and at last became so infected with pride and luxury, as to excite a general hatred. Matthew Paris severely satirizes them on this account, as well as for their inordinate accumulation of wealth and honours; who being so poor at first, says he, that they had but one horse to serve two of them, in token of which, they gave in their seal two men riding on one horse, yet suddenly are grown so insolent as to despise other orders, and rank themselves with noblemen.

Their riches, which was their chief crime, occasioned their ruin. A persecution, founded on most unjust and fictitious accusations, was formed against them in France by Philip le Bel, which example was soon followed in other countries. In 1310, a provincial council was held against them, at their house in London, upon articles of heresy and other crimes, most of which they denied; but confessing they could not purge themselves fully, as faultless, they were condemned to perpetual penance in several monasteries, and their possessions seized to the crown. In France their treatment was still more cruel: no less than fifty-four, or, according to Fabiau, sixty, were burnt alive, by order of Philip. Numbers of these innocent and heroic knights suffered in the flames with the piety and constancy of martyrs: some of them at the stake summoned their chief enemies, Clement V. and Philip, to appear in a certain time at the divine tribunal; both of those princes died about the time prescribed, which, in an age of superstition, proved their validity. But to return.

The templars seated themselves at the New Temple, before mentioned, as is evident from the dedication of their church, in the year 1185; where they continued till the suppression of their order, in 1310. Between these two periods it was again dedicated, viz. in 1040, probably on account of the greater part being re-edified. On the dissolution, the estates, together with the house in London, devolving upon the crown, Edward II. in 1313, bestowed the latter on Thomas Earl of Lancaster. After that nobleman's attainder, a grant was made to Adomar, or Aimer de Valence Earl of Pembroke, by the same monarch, of "the whole place and houses called the New Temple, at London, with the ground called Fiquet's Croft, and all the tenements and rents with the appurtenances that belong to the templars in the city of London and suburbs thereof, with the land called Flete Croft, part of the possessions of the said New Temple."

From Aimer de Valence this structure came into the possession of Hugh le Despencer the younger; and on his execution, in the



first year of Edward III. the right once more reverted to the crown. Here it would probably have continued ; but by a decree, which bestowed generally the lands of the templars upon the hospitals of St. John of Jerusalem, the above monarch granted this mansion to the knights of that order in England. These possessed it in the 18th year of his reign, when they were forced to repair the temple bridge ; but they soon after demised for the rent of 10*l.* per annum, to certain students of the common law, who are supposed to have removed from Thave's Inn, in Holborn.

Before we finish the history of the Temple, as a monastic institution, it may be necessary to remark, that such was its rank and importance, that not only parliaments and general councils frequently assembled there, but it was a sort of general depositary or treasury for the greatest persons in the nation, as well as the place where many of the crown jewels were kept. Matthew Paris informs us, that, in the year 1232, Hubert de Burgh, Earl of Kent, being prisoner in the tower of London, the king, Henry III., was informed that he had considerable wealth laid up in the New Temple, under the custody of the templars, which being desirous to appropriate to his own use, he sent for the master of the temple, and questioned him respecting it, who confessed that money had been delivered into the custody of himself and brethren, but he was unacquainted with the extent of the sum, and could by no means deliver it into the king's hands, without the especial license of him who committed it to the ecclesiastical protection. On this the king's treasurer and justiciar of the exchequer was sent to require a resignation from Hubert, who complying with the unjust demand, the keys were presented by the knights ; and Henry, after commanding an exact inventory to be taken of the treasure, seized on the whole, consisting, besides ready money, of vessels of gold and silver, and many precious stones of considerable value.

In 1245, Pope Innocent's nuncio resided in the New Temple, where was commanded to be brought him the sum of six thousand marks, to be raised from the English bishoprics, but which King Henry forbade.

In 1283, Edward I. taking with him Robert Waleran and others, came to the Temple, where calling for the keeper of the treasure-house, as if he intended to see his mother's jewels, which were there kept, he gained admittance to the house, broke open the coffers of different persons who had placed their money there for safety, and illegally took away 1000*l.*

In the rebellion of Wat Tyler the Temple suffered much, the property of the students being plundered, and almost every book and record destroyed and burnt.

Soon after this, but at what particular period is not known, the students in this seminary so far increased in number as to occasion their division into two separate bodies, called the society of the Inner Temple, and the society of the Middle Temple, who had two halls, &c. ; but continued to hold their houses as tenants to the

knights hospitalers, till the general suppression, in the reign of Henry VIII. and, after this event, for some time, of the crown, by lease.

In the 6th year of the reign of James I. the whole of the buildings of the two temples were granted by letters patent, bearing date at Westminster, 13th August, by the name of *Hospicia et capitalia messuagia cognita per nomen de le Inner Temple et le Middle Temple sive Novi Temple*, London, to Sir Julius Cæsar, Knt. then chancellor and under-treasurer of the exchequer, Sir Henry Montague, Knt. recorder of London, William Towse and Richard Daston, Esqrs. treasurer of the said inns of court, and Sir John Boyse, Knt. Andrew Grey, Thomas Farmer, Ralph Radcliff, and others, Esqrs. then benchers of these houses; to have and to hold the said mansions, with the gardens, &c. and appurtenances, unto the said Sir Julius Cæsar, Sir Henry Montague, and the rest above mentioned, their heirs and assigns, for ever, for lodgings, reception and education of the professors and students of the laws of this realm; yielding and paying to the said king, his heirs and successors, at the receipt of his exchequer, viz. for the mansion called the Inner Temple the sum of 10*l.* yearly, and for the Middle Temple 10*l.* yearly also, at the feast of St. Michael the archangel, and the annunciation of our lady, by equal portions, &c.

*Buildings.* Of the ancient buildings, the only part at present remaining is the church. This was founded by the templars in the reign of Henry II. upon the model of that of the holy sepulchre at Jerusalem (the general plan of all their churches), and was consecrated in 1185, by Heraclius patriarch of Jerusalem. The latter circumstance was formerly commemorated by an inscription over the little door next the cloister, which was removed on the church being repaired some years since; but is accurately copied in Strype's edition of Stowe's Survey of London. It is in old Saxon capitals, engraved within a half circle, and not only denotes the year when the church was dedicated, &c. as above, but to whom, viz. the blessed Virgin, and finishes with the indulgence of sixty days' pardon to such, who, according to the penance enjoined them, resorted there annually. The old hall, which was a later structure, and supposed by Dugdale, from the form of the windows, to be about the age of Edward III. was pulled down to make room for the present substantial fabric. This, though a fine room, is comparatively small: it is ornamented with emblematical paintings by Sir James Thornhill, and full length portraits of the celebrated Littleton, who died in 1481, and his commentator Coke, a distinguished lawyer and judge in the reigns of James I. and Charles I. Besides these, there are portraits of other particular judges deserving of remembrance.

Besides the hall and church, the Inner Temple contains a good library, open to students and others on application to the librarian from ten in the morning till one; and in the afternoon, from two till six. The other buildings consist of several extensive courts or



squares, some of larger, some of lesser dimensions, and all surrounded by houses or chambers well inhabited. A beautiful garden on the Thames side, chiefly covered with greensward, and having a spacious gravel walk or terrace on the water's edge, fronts the hall. This is laid out with great taste, and kept in perfect order, and in summer time forms a crowded promenade; from whence the view up and down the water is extremely rich. Blackfriars Bridge, Waterloo Bridge, part of Westminster Bridge, and the elegant back front of Somerset House, with the winding Thames, the opposite busy shore, and the beautiful swell of the distant Surrey hills; altogether form an assemblage of objects unrivalled in variety and magnificence. Before the hall itself is a broad paved terrace, excellently adapted for the purposes of walking and conversation when the gardens are not sufficiently dry.

Though the greater part of the buildings in the Temple, both Inner and Middle, that is to say, the chambers, are handsome and convenient, and excellently adapted to the purposes for which they are destined; yet being of brick, and chiefly modern date, they have nothing in their appearance to interest but their neatness and uniformity. Each house, consisting of several sets of chambers, is ascended by a common staircase in the manner of the houses at Paris and Edinburgh; and each set of chambers usually occupies a floor, the rents of which differ in proportion to their situation, size, elegance, &c.

The history of the Middle Temple is included in that of the Inner Temple; the constitutions of the two were, however, somewhat different, as well as their ancient ceremonies, and the rank and number of their officers. In both, and in fact in all the inns of court and chancery, the important concern of eating and drinking seems to have occupied the most attention: instruction, such as it was (consisting of public readings or lectures, given by a principal of the society, and the mootings, or arguing of cases), was only a secondary object. In other respects, the rigorous strictness of a university was observed. In the solemn revels, as they are called, post revels, dancings, and other frequent entertainments, in which the grave gentlemen of the bench indulged, an absurd degree of homage seems to have been exacted from the inferiors to the principals of the society, and the minutest punctilios in dress and behaviour watched with a ridiculous anxiety. These badges of slavery, for such they really appear to be, in the arbitrary way they were formerly insisted on, though in some respects they might have their use, are all done away with; and the law student, according to the present system, is only required to dine a certain number of times during term in the hall of the society, or, as a late writer emphatically terms it, "to eat his way to the bench," which is called keeping his commons. To dine a fortnight in each term, is deemed keeping the term; and twelve of these terms qualify a student to be called to the bar, that is, to be entitled to plead and manage causes for clients in the courts.

The society of the Middle Temple, as well as the Inner Temple consists of benchers, or such as have been readers, anciently called apprentices of law, members, barristers, and students; formerly denominated utter barristers and inner barristers, being students under seven years, and all of whom had their commons in the hall.

The government of the society is vested in the benchers, whose general meetings to transact business are (and long have been) dignified with the name of parliaments, and are held with much state and formality.

The officers and servants are, a treasurer, sub-treasurer, steward, chief butler, three under butlers, upper and under cook, a pannier-man, a gardener, two porters, two washpots, and watchmen: anciently there were four under butlers, who wore gowns, and four washposts, besides a turn-broach, two scullions, &c.; all of whom, except the porter and gardener, had their diet in the house, besides wages and other perquisites belonging to their offices. The porter's lodge, now near the hall, was anciently under the Middle Temple gateway, and he was entitled to receive the rent of two shops on the east side.

The following were anciently the duties of the several officers and members of this society; and, as affording a picture of old manners, are interesting.

“The steward is to provide the ordinary diet for the house (extraordinary being to be taken care of by the second cook): he is allowed his servant, besides a porter and pannier-man, to bring in the meat; and keeps a roll, in which the names of all persons are entered, who are either in whole or in half commons, viz. half the week, and such only as take repasts; every repast being one meal in the hall, and of which two and no more are allowed; for if they exceed that number it is reckoned as half a week; and accordingly they are rated at the week's end, viz. Saturday, when he casts up the commons in the presence of two utter barristers in the term-times, and two gentlemen under the bar in vacation time, who are to oversee him and to examine his accounts, being termed auditors. But it belongs to the chief butler, and not to the steward, to notice the names of such as are in commons, which are entered in the buttery-book; out of which the steward makes up his roll; and his account so made up is final. Any gentleman, therefore, who happens to be mischarged must pray an allowance of another week, half a week, &c. which is granted him on proving such overcharge.

“To the steward and his servant it belongs to serve in the meat in messes through the whole hall, except to the masters of the bench table and their associates (being like fellow-commoners in the universities), who are served by the second butler and his assistant; and the masters of the bar, that is, the premier bar table, consisting of such as have been readers of New Inn, or such whose puisnes have been readers there, who are served by the second butler and the pannier-man.



“The chief butler is to keep a buttery-book, and enter into it such orders as are made by the bench at table, in the same manner as the under treasurer is to enter those made in parliament; he is likewise to enter the names of those who are admitted into commons. He is to provide bread and beer, and green earthen drinking pots, which are paid for by the steward. He provides cheese at his own expense, and assigns to each his portion after dinner: for this he receives from every one in commons a stated weekly allowance.

“It is the butler’s province to call any student guilty of a misdemeanor to the bench table, there to be reprimanded. He likewise provides torches for the solemn revels, together with a white rod and staff for the readers elect, which are the two next ancients in commons then present in the hall. The first, who is denominated master of the revels, is at all solemn revels to carry the white staff, and leads the several dances, or ancient measures, conducting the whole society (all under benchers) round the hall at those times: the other is to carry the white rod or verge, and is called master of the ceremonies, who, standing at the cupboard, with a loud voice doth thrice summon the master of the revels to come forth and perform that duty. He was to notice such as were absent on these occasions, and present them to the bench; to give information of such as wore hats, boots, or long hair, the latter of which was considered anciently as a high enormity.

“The other butlers were to see the tables covered in the hall, and clear again at the end of every meal. The oldest was to attend the bar table, and the tables on that side of the hall. The puisne, or fifth butler, those on the other side, and to serve the different tables there with bread and beer. This latter was to say ‘grace both before and after meat, with a distinct and audible voice; standing in term-time with his face towards the bench table, and in vacation to that of the bar.’

“By an entry in the buttery-book, the three butlers were to have a salary from every gentleman of 12*d.*; but this sum was afterwards raised. The collection thus made, was, by an order made in the same reign, to be divided into four parts, of which three fourths belonged to the three ancient butlers, and the remaining fourth to the two younger. The business of these younger or puisne butlers was to wash pots, fill beer, “chip bread,” and in general to assist the others. The yearly wages of the head butler were 3*l.* 6*s.* 8*d.* and of the other four 20*s.* each.

“The chief cook had various perquisites, as the dripping and scummings, the rumps and kidnies of loins of mutton (which was the ancient supper fare). He besides gave every Easter term a calves head breakfast to the whole society, for which every gentleman paid at least 1*s.* But, in 11 *Jac.* I. this breakfast was turned into a dinner, and appointed to be on the first and second Monday in Easter term. The price per head was regularly fixed, and to be paid by the whole society, as well absent as present; and the sum

thus collected, instead of belonging solely to the cooks, was divided among all the domestics of the house. The chief cook's wages were the same as the chief butler's. The under cook received 40*s*. The turn broach 26*s*. 8*d*. The scullions were paid by the casual benevolence of the gentlemen.

“ To the second cook's office it belonged to provide special *achates* for the bench table, and likewise for the ancient mess of the bar table ; as also of the ancients table, such as are past their reading and never read : which special *achates* are such (for the most part) as the bench pleaseth to make choice of ; and for the same the benchers pay weekly, but the rest by the meal.

“ The pannier-man, by his winding of his horn, summons the gentlemen to dinner and supper. He also provides mustard, pepper, and vinegar for the hall ; and hath for his wages yearly 3*l*. 6*s*. 8*d*. and the fragments of certain tables ; viz. the bar table and those others in the middle of the hall, which he serves, and is to attend unto. The gardener's wages were 6*l*. 13*s*. 4*d*. and those of the porter 6*l*. 10*s*.

“ The office of treasurer is of considerable importance, and the person who fills it chosen yearly by the parliament from among the readers. He is the supreme officer of the whole society, and has the regulation of their concerns. He admits gentlemen into the society ; and, on such occasions, has power to remit or abate fines. He is to make sale of such chambers as are forfeited, or fall to the house by the death of its members. He is the disburser of the society's cash, and has the power to make repairs to a limited extent : he may likewise compound and mitigate forfeitures, house duties, rents of tenants, and other matters which concern the society. The duration of this office was anciently unlimited, but by an order in an. 39 *Eliz.* it was made annual. The treasurer is not allowed salary. The under treasurer transacts the active business of the above office, and besides several privileges has a stated allowance and certain fees. He attends on the masters of the bench at the parliaments and solemn assemblies, and is their clerk of parliament. He enters all matters of record ; is *custos rotulorum* for the society, and receives fees or gratuities for searching, copying, or certifying of the records and orders of the house.”

The manner of holding the parliaments is as follows :

First, the benchers only, who have been readers, meet in the parliament chamber, which is at the lower end of the hall, and take their places according to their seniority. Then the treasurer for the time being sits at the table bareheaded, and reads petitions or proposes such other subjects as are to be discussed ; the under treasurer standing by as an attendant. If a difference of opinion occurs, the votes are taken separately, beginning at the youngest, and the majority determines it. Formerly none who had been called to the bench to read, attended these parliaments till they had fulfilled the office of reader ; but that objection was afterwards dispensed with. All new laws passed by the parliament are notified to



such inferior members of the house as are in commons, by the high treasurer; and such members, by the orders of the society, are bound to attend every last Friday of each term (which is called a parliament of attendance), and all absentees are subject to a forfeit of *3s. 4d. pro non consultando*.

The several degrees in this house were, student, utter or outer barrister, inner barrister, cupboard-man, benchers; and from the benchers were elected the readers.

Admission of students was either generally or specially, and the fee was accordingly: if generally, five marks; if specially, *5l.*; and, anciently, as much as *6l. 13s. 4d.* unless the person had previously studied in an inn of chancery, in which case it was less. The admission of students is entered, on payment of the fine, by the under treasurer, though formerly a bond was first given for his observing the rules and orders of the house, and a small fee is afterwards paid to the chief butler and senior washpot. The student must continue in commons two vacations, or fine, if generally admitted; but if specially, he is not bound to such attendance.

The habit is a student's gown, and in term-time a round cap, which is worn both in the hall and in church. Boots, spurs, swords, and cloaks, are in these places expressly forbidden; and a breach of these orders incurs a penalty.

On admittance, the student is entitled to make purchase of a chamber; which, by the ancient custom of the house, he had an estate in for the term of his life, if he so long continued in the society, and kept commons at least six weeks in every year, otherwise it became forfeited to the house. And this chamber he was entitled to sell, the party purchasing having his own life in it; but the latter was to pay a fine of *6l.* for admittance; and if he happened to die before sale made of the same, it fell to the house.

Students formerly used in the reading times to carry the readers' meat to the bench tables, and still carry up the meat at the readers' feast, and at the two other great feasts of All Saints, and the Purification of our Lady. "They used also post revels upon such feast-days, and every Saturday night between the said feasts, besides masques and other disports in the time of Christmas."

After performance of the regular exercises of the house, the student was admitted to the degree of utter barrister, anciently by the call of the reader, who was vested with that power; but afterwards by the parliamentary act of the benchers. The ceremony of calling to the bar consisted merely in the notification of election to the other barristers, the entry of the name by the under treasurer, and taking the oath of supremacy at the cupboard. They were not allowed, however, to wear a bar gown openly, or to practise, till they had continued their exercise of mooting for some time afterwards in the inns of chancery.

The next step to which the barrister ascended was to the cupboard (certainly an enviable station). Four of these cupboard-men, in the reading times, argued cases by turns, and were usually

the four senior barristers. No man was to become a cupboard-man unless he resolved to read in his turn, in which case he gave an expensive treat. From cupboard-man the next degree was benchers: then a reader, which usually succeeded within two years after the party's first admittance to the cupboard; though this was at the option of the bench, who rejected him, if they saw fit, the cupboard-man, before his election as reader, being only a probationer.

The reader elect, on being called to the bench table, where he was thenceforth to take his commons, was to give a garnish of wine for his first welcome; and when his readings were finished, and he removed from the bar table to the "auncients' table," was to give likewise a second garnish of wine for his welcome there. After which he was freed from all the exercises of the house, and also from the ceremony of "walking the old measures about the hall at the times accustomed."

The ceremonies to be observed by the new readers were very curious. At the following feast-day of All Saints, when such dignitaries as were educated at the inn were "highly feasted," and came in their scarlet robes, the readers were to meet and conduct them to the upper end of the hall. "For distinction and order's sake, the one of them, viz. the ancient, hath a white staff in his hand; the other a white rod, with which they usher in the meat, following next after the music. When the meat is brought to the table (which at such solemn feasts is always performed by young gentlemen of the house, under the bar), the one of the two new readers elect, receives every dish of the gentlemen who carried it, and placeth it on the table, in decent order; the other standing by to wait on the judges. And during the feast, they both, with solemn courtesies, welcome both the judges and serjeants.

"Besides this, the puisne reader elect serves every mess throughout the hall, receiving it from the steward and placing it on the table. Dinner being ended, they wait on the judges and serjeants; ushering them either into the garden or some other retiring place, until the hall be cleansed, and prepared; and then they usher them again into the hall, and place them in their rooms, one after another. This being done, the auncient of the two that hath the staff in his hand, stands at the upper end of the bar table; and the other, with the white rod, placeth himself at the cupboard, in the middle of the hall, opposite to the judges; where the musick being begun, he calleth twice the master of the revells. And, at the second call, the auncient, with his white staff, advanceth forward, and begins to lead the measures; followed, first by the barristers, and then the gentlemen under the bar, all according to their several antiquities: and when one measure is ended, the reader at the cupboard calls for another, and so in order.

"All such as are in commons, under the degree of benchers (except of them of the auncients' table, who are past their readings) ought not to be absent from solemn revells: and whoever they be that do absent themselves, do forfeit, or are fineable 4s. 3d. And



whosoever of the bar that are made choice of to carry up wafers (on grand days) to the judges, and do refuse, do forfeit 10*s.* And whosoever of the young gentlemen under the bar, that refuse, do forfeit 5*s.* And whosoever, on days of solemn revells, do refuse to carry up bread and beer to the masters of the bench, do forfeit, barristers 6*s.* 8*d.* and others 3*s.* 4*d.*

“ When the last measure is dancing, the reader at the cupboard calls to one of the gentlemen of the bar, as he is walking or dancing with the rest, to give the judges a song: who forthwith begins the first line of any psalm as he thinks fittest, after which ‘ all the rest of the company follow and sing with him.’ Whilst they are thus walking and singing, the reader, with the white rod, departs from the cupboard and makes his choice of a competent number of utter barristers, and as many under the bar, whom he takes into the buttery, where there is delivered unto every barrister, a towel, with wafers in it, and unto every gentleman under the bar a wooden bowl filled with ipocras, with which they march in order into the hall, the reader with his white rod going foremost. And when they come near to the half pace, opposite to the judges, the company divide themselves, one half (as well barristers as those under the bar) standing on the one side of the reader, the other on the other side; and then, after a low solemn congee made, the gentlemen of the bar first carry the wafers; the rest, with the new reader, standing in their places. At their return, they all make another solemn low congee, and then the gentlemen under the bar carry their bowls of ipocras to the judges; and returning when the judges have drank, they make the like solemn congee, and so all depart, saving the new readers elect, who wait upon the judges till their departure, and then usher them down the hall unto the court gate, where they take their leaves of them.

“ Besides these solemn revells, or measures aforesaid, they had wont to be entertained with post revells, performed by the better sort of the young gentlemen of the society with galliards, corran-toes, and other dances; or else with stage plays: the first of these feasts being at the beginning, and the other at the latter end of Christmas. But of late years these post revells have been disused, both here and in the other inns of court.”

The reader entered on his reading generally the beginning Monday in Lent, with much state and ceremony. He first absented himself from commons for a time, and kept his chamber, that his re-appearance might be with more splendour. On the Sunday afternoon preceding his entry on his office, he went to church accompanied by such benchers as were in town, two of whom, generally the next precedent readers, were appointed for his assistants. He was, besides, accompanied by at least twelve or fourteen servants, in rich liveries, and the same night at supper took his place in the hall, in a chair prepared for him at the upper end of the benchers’ table.

The following morning he chose his sub-lecturer, to whom de-

livering his bag of books and papers, he repaired to the parliament chamber to breakfast : that ended, he went into the hall, where the whole society awaited his coming, and, resting at the cupboard, there took the oaths of supremacy and allegiance. He then seated himself at the lower end of the bench table, where the sub-lecturer first read over the statute, or that part of it he intended to discuss. The reader himself then began "with a grave speech, excusing his own weakness, with desire of their favourable censures ; and concluded with reasons wherefore he made choice of that statute."

These readings were frequently honoured with the attendance of such judges and serjeants as had been brought up in the house, who came always in their purple robes and scarlet hoods, and were placed on a form opposite to the benchers, with their backs to the reader. The debate finished with a grand feast, in which the principals of the company were entertained by the reader at his own table, and every other mess throughout the hall was honoured with an extraordinary dish.

Other arguings succeeded the removal of the dinner-cloth, and this agreeable method of study was followed three days in a week, viz. every Monday, Wednesday, and Friday, "the other intermediate days," says an author of the time, "being spent in feasting and entertainment of strangers, who are commonly great lords and other eminent persons. But, be the guests of never so high a degree, the reader, within the precincts of the house, hath precedence of them ; and at the table keeps his chair at the upper end. His expenses, during this time of reading, are very great ; insomuch as some have spent above 600*l.* in two days less than a fortnight, which is now the usual time of reading."

This excess had been gradually increasing ; for by an order of the bench, made in the reign of Philip and Mary, every summer reader was enjoined to spend fifteen bucks in the hall, during his time of reading, on pain of . . . marks. And shortly after, to avoid all occasion of superfluous expense, by another order, in the reign of the same king and queen, the reader was enjoined not to exceed those fifteen bucks : but few summer readers afterwards had less than threescore bucks, besides red deer ; some spent fourscore, and even an hundred. One brace of these bucks were commonly bestowed on New Inn, to feast the students there : and the neighbouring parishes to the Temple, also tasted of the reader's bounty. The house contributed a small sum towards this expense, allowing each reader one hogshead of wine, or 5*l.* in money ; and a special admittance of any gentleman into the house, or 5*l.* more in lieu of it. And in the last week of his reading, a costly feast was provided for the entertainment of foreign ambassadors, peers, and men of eminent quality : which, though called the reader's feast, was not at his cost, it being imposed on four gentlemen of the house ; who were called stewards of the feast. Two of them were outer barristers, and the other two under the bar, whose expense



was at least 10*l.* each; though anciently less: for by an order made 34 *Eliz.* they were to be at no farther charge than 5*l.* a man.

The readings held originally during the space of a month, but were afterwards reduced to three weeks, and then to a fortnight. When they were finished, it was usual for the students to accompany the reader with great state and solemnity to his residence, and to treat him at night with a plentiful supper, at their own charges.

The reader was thus created a benchler. The first parliament of the succeeding term he was invited by the benchers; where being come, and modestly taking the lowest seat, one of his assistants, in a formal oration, declared the reader's great learning, and the expense he had been at; and having finished this compliment, the reader himself, in another grave oration, magnified the important assistance he had derived, in the fulfilment of his office, from the gentlemen of the society: after this, having received the thanks of the bench, "they all together sit down to supper; at what time (and not before) the reader is an absolute and confirmed benchler, and hath voice with the rest in all succeeding parliaments."

By an ancient custom the former reader was to officiate as steward of the house at Christmas; but this office being thought rather a degradation, was, by an order made in the time of Elizabeth, commuted by a fine of money, afterwards turned into a "brawn," and "muskadine."

On the Tuesday and Thursday evenings there were usually moots after supper before the benchers, who assembled themselves for that purpose, in the bay window, at the upper end of the hall, ranked according to their seniority.

A reader, by the ancient orders of the house, was obliged in his turn to read a second time, and was then called a double reader; his expenses, however, in the latter event, were more moderate, and he had a greater allowance from the house.

The benchers of this inn of court are possessed of great privileges. They are governors of the house, and in parliament have power to bind the rest, as well as out of parliament, at the bench table, to punish transgressors by fine, forfeiture of their chambers, and expulsion. They may come within the bar at the chapel of the Rolls among the serjeants at law and the king's council, and are heard by the master of the rolls in preference to other members.

Any member of this society made recorder of London, takes precedence as a reader, though otherwise not in his turn, an instance of which happened in 1635, when Sir Henry Calthorp, the queen's solicitor-general, being made recorder of London, was declared by the bench to be the next lent reader, before Mr. Latham, who was then the city serjeant and his immediate ancient. Afterwards, on the death of Sir Walter Pye, Sir Henry Calthorp being made king's attorney of the court of wards, and resigning the recordership, the term following Mr. Latham would not give way to him, but took his room according to his seniority.

Serjeants at law have always been chosen from among the readers, and in this event are placed at the upper end of the bench table as elected to that office,—though the new-made serjeant is still accounted a bencher, and in commons till he receives the coif, when he takes leave of the house with the following solemnity.

In the morning all the members of the society meet in the hall, where likewise comes the serjeant elect. The treasurer of the house then makes a grave and learned speech, and at the conclusion of it presents him as the gift of the whole society with a purse and 10*l.* raised by a collection of 3*s.* 4*d.* each member, which is received by him with a congratulatory oration.

Yet though the new-made serjeant, in consequence of his dignity, takes leave of the society, he is still in part a member; that is to say, he keeps his chamber till he is assigned one in one of the serjeant's inns. This is, however, said to be rather a matter of favour than of right. If he is suspended from his degree, or accepts another office, as attorney or solicitor-general, he returns again into commons without any new admittance.

When a serjeant of this society is made a judge, he is accompanied to Westminster Hall by all the fellows of the house; and they are at liberty, after he is possessed of his dignity, to request his advice and assistance in such matters as respect the welfare of the society.

Besides the benchers are another description of members, called associates, who sit at the bench table, but have no voice in the government of the house. These are persons who hold eminent offices, and receive this favour by courtesy. They are not bound to observe any rules like the members of the house, and are in fact a kind of visitors. By an order made in the reign of James, associates for their admittance were to pay to the treasurer a fine of an hundred marks.

*Church.*]—The Temple church belongs in common to the two societies: we have before mentioned the particulars of its foundation. This is a very beautiful specimen of the early Gothic architecture: it has three aisles running east and west, and two cross aisles. The windows are lancet-shaped, very antique, and the western entrance, which answers to the nave in other churches, is a spacious round tower in imitation of the church of the holy sepulchre (a peculiarity which distinguishes all the churches of the knights templars). This is separated from the choir, not by close walls, but by a handsome screen, which, however, has the defect of obstructing the sight. It is supported by six pointed arches, each resting on four round pillars, bound together by a *fascia*. Above each arch is a window with a rounded top, with a gallery, and rich Saxon arches intersecting each other. Without side of the pillars is a considerable space preserving the circular form. On the lower part of the wall are small pilasters meeting in pointed arches at top, and over each pillar a grotesque head.



The choir is a large building of the square form, evidently erected at another time. The roof is supported by slight pillars of what is usually called Sussex marble; and the windows on each side, which are three in number, are adorned with small pillars of the same. On the outside is a buttress between each. The entire floor is of flags of black and white marble. The length of the choir is 83 feet, the breadth 60, and the height 34: it is unencumbered with galleries. The height of the inside of the tower is 48 feet, its diameter on the floor 51, and the circumference 160.

The pillars of this tower (six in number) are wainscoted with oak to the height of eight feet, and some have monuments placed against them, which injures the uniformity of the plan. It is singular that the small pillars, and the heads which ornament them, are not of stone, but a composition resembling coarse mortar, which is very rotten, and from neglect and damp, threatens (unless repaired) a very speedy demolition.

The Temple church is principally remarkable (excepting the fashion of the edifice itself, which has a very uncommon and noble aspect) for the tombs of eleven of the knights templars. Eight of these have the monumental effigies of armed knights; the rest are coped stones of grey marble.

The figures consist of two groups, out of which five are cross-legged; the remainder lie straight. Each group is environed by a spacious iron gate. In the first are four knights, each of them cross-legged, and three in complete mail, in plain helmets flatted at top, and with very long shields. One of these is known to have been Geoffry de Magnaville, created Earl of Essex in 1148: the other figures cannot be identified either in this or the second group; but three of them are conjectured by Camden to commemorate William Earl of Pembroke, who died in 1219, and his sons William and Gilbert, likewise earls of Pembroke and marshals of England. One of the stone coffins also, of a ridged shape, is supposed by the same antiquary to be the tomb of William Plantagenet, fifth son of Henry III.

The dress and accoutrements of these knights are extremely singular: no two are alike, though all are armed in mail. Their position likewise is varied, and there is still sufficient expression in the faces to show that personal resemblance was aimed at, and in some degree successfully. One figure is in a spirited attitude, drawing a broad dagger; one leg rests on the tail of a cockatrice, the other is in the action of being drawn up, with the head of the monster beneath. Another is bare-headed and bald, his legs armed, his hands mailed, his mantle long; and round his neck a cowl, as if, according to the common superstition of those days, he had desired to be buried in the dress of a monk, lest the evil spirit should take possession of his body. On his shield is a *fleur de lys*. The Earl of Pembroke bears a lion on his shield, the arms of that great family. The helmets of all the knights are much alike, but two of them are mailed.

The Temple church contains some few other ancient monuments, chiefly to the memory of eminent lawyers, as Plowden, Selden, Sir John Vaughan, &c. and one of a bishop in his episcopal dress, a mitre and a crosier, well executed in stone.

The superior clergyman of the Temple church, since the reign of Henry VIII. is called master or *custos* of the Temple, and is constituted such by the king's letters patent without institution or induction: there is besides a reader and lecturer. In Stowe's time it had four stipendiary priests, with a clerk, who had stipends allowed them out of the possessions of the dissolved monastery of St. John of Jerusalem. But the establishment was still greater in the Romish times, when the several priests had a hall and lodgings assigned them within the house, as appears by testimonials in the reign of Henry VII. The charges of the present church are jointly paid by both societies, who have each their side at divine worship.

The tone of the organ here has long been remarked as the very finest in the kingdom.

*Garden.*]—Shakspeare, whether from tradition or history is unknown, makes the Temple Garden the place in which the badge of the white and red rose originated, the distinctive cognizance of the houses of York and Lancaster, under which the respective partisans of each arranged themselves in the fatal quarrel which caused such torrents of blood to flow,

— “The brawl to-day,  
Grown to this faction in the Temple Garden,  
Shall send between the red rose and the white,  
A thousand souls to death and deadly night.”

The Middle Temple, as well as the Inner, is possessed of a very good library, to which strangers find a ready access during term time. Both contain many valuable MSS. ; but the far greater number belongs to the Inner Temple.

TENDER, is an offer to pay a debt, or perform a duty. In every plea of tender, where money is the thing demanded by the action, and the debt or duty is not discharged by the tender and refusal, money may be brought in without leave of the court: but as other things as well as money, may, where a tender is pleaded, be brought into court, this is with more propriety called bringing into court generally, than a bringing money into court. In all other cases, the leave of the court must be had, before money can be brought into court. The rule, under which this leave is granted, is, as in the case of an ejection by a mortgage, founded upon a particular act of parliament. In other cases, it is founded upon that discretionary power, which is, for the furtherance of justice, vested in the court. By the discretionary rule, it is sometimes ordered, that upon bringing money into court, all proceedings in an action shall be stayed. At other times it is ordered, that the money brought into court, shall be struck out of the plaintiff's declaration, and the plaintiff shall not, at the trial of the issue, be permitted to give any evidence as to this money. This rule, by



which the money brought into court, is ordered to be struck out of the declaration, is from its being more frequently granted, than that by which it is ordered that the proceeding shall be stayed, called the common rule.

If bank notes have been offered, and no objection made on that account, it has been considered by the court of king's bench as good tender.

**TENEMENT**, in its common acception, is applied only to houses and other buildings; but in its original, proper, and legal sense, it signifies every thing that may be holden provided it be of a permanent nature, whether it be of a substantial or unsubstantial and ideal kind. Thus frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, and the like; and as lands and houses are tenements, so is an advowson a tenement; and a franchise, or office, a right of common, a peerage, or other property of the like unsubstantial kind, are all of them, legally speaking, tenements.

**TENURE**, the manner whereby lands or tenements are holden, or the service that the tenant owes to his lord.

Under the word tenure, is included every holding of an inheritance; but this signification of this word, which is a very extensive one, is usually restrained by coupling other words with it; this is sometimes done by words which denote the duration of the tenant's estate: as if a man hold to himself and his heirs, it is called tenure in fee simple. At other times the tenure is coupled with words, pointing out the instrument by which an inheritance is held: as where a man held by knight's service, it is called tenure by knight's service.

**TESTAMENT.** See **WILLS.**

**THEFT**, is an unlawful felonious taking away of another man's moveable and personal goods, against the owner's will, with an intent to steal them; and this is divided in theft simply so called, and petit theft, whereof the one is of goods above the value of 12*d.* and is felony; the other under that value, and is no felony, but is called petit larceny.

**THEFT BOTE**, is the receiving of a man's goods or other things, from a thief after stolen, not to prosecute the felon, that the thief may escape, which is an offence punishable with fine and imprisonment, &c.

**THREATENING LETTER.** If any person shall send any letter threatening to accuse any other person of a crime punishable with death, transportation, pillory, or other infamous punishment, with a view to extort money from him, he shall be punished at the discretion of the court, with fine, imprisonment, pillory, whipping, or transportation.

But if the writer of a threatening letter deliver it himself, and do not send it, he is guilty of felony under this act.

**TIMBER TREES**, are properly oak, ash, and elm. In some particular countries, by local custom, other trees, being commonly there made use of for building, are considered as timber. Of

these, being part of the freehold, larceny cannot be committed; but, if they be severed at one time, and carried away at another, then the stealing of them is larceny. And by several late statutes the stealing of them in the first instance, is made felony, or incurs a pecuniary forfeiture.

For the better preservation of roots, shrubs, and plants, it is by the 6th G. 3. c. 48. enacted, that from and after the 24th day of June, 1766, every person convicted of damaging, destroying, or carrying away any timber tree, or trees, or trees likely to become timber, without consent of the owner, &c. shall forfeit for the first offence not exceeding 20*l.* with the charges attending; and on non-payment, shall be committed for not more than twelve, nor less than six months; for the second offence, a sum not exceeding 30*l.* and on non-payment shall be committed for not more than eighteen, and not less than twelve months; and for the third offence, is to be transported for seven years.

All oak, beech, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees, shall be deemed and taken to be timber trees, within the true meaning and provision of this act.

Persons convicted of plucking up, spoiling or taking away, any root, shrub, or plant, out of private cultivated ground, shall forfeit for the first offence, any sum not exceeding 40*s.* with the charges; for the second offence, a sum not exceeding 5*l.* with the charges; and for the third offence are to be transported for seven years.

Power given to justices of the peace to put this act in execution.

The 9 G. 3. c. 41. extendeth this act to the king's forests, and to hollies, thorns, and quicksets, and also to the having such in custody. And the 13 G. 5. c. 33. extended it to poplar, alder, maple, larch, and hornbeam.

By 45 G. 3. c. 66. the 6 G. 3. c. 48. and 9 G. 3. c. 41. are extended to all woods belonging to his majesty, and to persons taking away bark from woods of his majesty or any of his subjects, or having it unlawfully in their possession; and after more than three offences, the offenders shall be punished as incorrigible rogues.

TITHES, are the tenth part of the increase yearly arising and accruing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. And hence they are usually divided into three kinds; prædial, mixed, and personal.

*Prædial tithes*, are such as arise merely and immediately from the ground, as grain of all sorts, hay, wood, fruits, herbs; for a piece of land or ground, being called in Latin *prædium*, whether it be arable, meadow, or pasture, the fruit or produce thereof is called prædial, and consequently the tithe payable for such annual produce, is called a prædial tithe.

*Mixed tithes*, are those which arise not immediately from the ground, but from things immediately nourished from the ground; as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chickens, milk, cheese, eggs.

*Personal tithes*, are such as arise from the honest labour and in-



dustry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain, after charges deducted.

Tithes, with respect to value, are divided into great and small; great tithes, as corn, hay, wood; small tithes, as the prædial tithes of other kinds, together with those that are mixed, and personal.

Tithes of common right belong to that church within the precincts of whose parish they arise. But one person may prescribe to have tithes within the parish of another; and this is what is called a portion of tithes.

No tithe is due *de jure* of the produce of a mine, or of a quarry; because this is not a fruit of the earth, renewing annually; but is the substance of the earth, and has perhaps been so for a great number of years.

But in some places tithes are due by custom of the produce of mines.

No tithe is due of lime: the chalk of which this is made being part of the soil. Tithe is not due of bricks, which are made from the earth itself. Nor is tithe due of turf, or of gravel: because both the part of the soil. It has been held, that no tithe is due of salt, because this does not renew annually. But every one of these, and all things of the like kind, may by custom become titheable.

Of barren land converted into tillage, no tithe shall be paid for the first seven years; but if it be not barren in its own nature, as if it be woodland grubbed and made fit for tillage; tithes shall be paid presently; for woodland is fertile, not barren.

*Glebe lands*, in the hands of the parson, shall not pay tithe to the vicar, nor being in the hands of the vicar, shall they pay tithe to the parson, because the church shall not pay tithes to the church. But if the parson let his rectory, reserving the glebe lands, he shall pay the tithes thereof to the lessee.

No tithes are due for houses; for tithes are only due of such things as renew from year to year.

But houses in London are, by decree, which was confirmed by an act of parliament, and made liable to the payment of tithes.

There is likewise in most ancient cities and boroughs, a custom to pay tithes for houses: without which there would be no maintenance in many parishes for the clergy.

As to mills, it is now settled by a decree of the house of lords, upon an appeal from a decree of the court of exchequer, that only personal tithes are due from the occupier of a corn-mill.

The occupier of a newly erected mill is liable to tithes, although such mill is erected upon land discharged of tithes.

*Agistment*, in the strict sense of the word, means the depasturing of a beast the property of a stranger: but this word is constantly used, in the books, for depasturing the beast of an occupier of land, as well as that of a stranger.

An occupier of land, is not liable to pay tithe for the pasture of horses, or other beasts, which are used in husbandry in the parish in

which they are depastured ; because the tithe of corn is by their labour increased.

But if horses or other beasts are used in husbandry out of the parish in which they are depastured, an agistment tithe is due for them.

No tithe is due for the pasture of milk-cattle which are milked in the parish in which they are depastured ; because tithe is paid of the milk of such cattle.

No tithe is due for the pasture of a saddle horse which an occupier of land keeps for himself or servants to ride upon.

An occupier of land is liable to an agistment tithe for all such cattle as he keeps for sale.

Milk-cattle, which are reserved for calving, shall pay no tithe for their pasture whilst they are dry ; but if they be afterwards sold, or milked in another parish, an agistment tithe is due for the time they were dry.

No tithe is due from an occupier of land for the pasture of young cattle, reared to be used in husbandry or for the pail.

But if such young beasts be sold, before they come to such perfection as to be fit for husbandry, or before they give milk, an agistment tithe must be paid for them.

An occupier of land is liable to an agistment tithe for all such cattle as he keeps for sale.

But if cattle, which have neither been used in husbandry, nor for the pail, are, after having been kept some time, killed, to be spent in the family of the occupier of the land on which they are depastured, no tithe is due for their pasture.

No tithe is due for the cattle, either of a stranger or an occupier, which are depastured in grounds that have, in the same year, paid tithe of hay.

But it is generally true, that an agistment tithe is due for depasturing any sort of cattle the property of a stranger.

No agistment tithe is due for such beasts, either of a stranger or an occupier, as are depastured on the headlands of ploughed fields, provided that these are not wider than is sufficient to turn the plough and horses upon.

No tithe is due for such cattle as are depastured upon land that has the same year paid tithe of corn.

If land, which has paid tithe of corn one year, is left unsown the next year, no agistment is due for such land, because by this lying fresh the tithe of the next crop of corn is increased.

But if land, which has paid tithe of corn in one year, be left unsown the next year, no agistment is due for such land, but if suffered to lie fallow longer than by the course of husbandry is usual, an agistment tithe is due for the beast depastured upon such land.

Sheep, after paying tithe of wool, had been fed upon turnips not severed, by which they were bettered to the value of 5s. each, and were then sold ; it also appeared, that before the next shearing



time, as many had been brought in, as were sold, and that of these tithe of wool had been paid. It was insisted, that if an agistment were to be paid for the sheep sold, it would be a double tithing: but the court held that this was a new increase, and decreed the defendant to account for an agistment tithe.

But in a later case the court held, that no agistment tithe should be paid, because sheep are *unimalia fatua*.

*Corn.* It is held, that no tithe is due of the rakings of corn involuntarily scattered.

But if more of any sort of corn be fraudulently scattered, than there would have been scattered if proper care had been taken, tithe is due of the rakings of such corn.

No tithes are due of the stubbles left in corn fields, after mowing or reaping of corn.

Tithe of hay is to be paid, though beasts of plough or pail, or sheep, are to be foddered with such hay.

But no tithe is due of hay upon the headlands of ploughed ground, provided that such headlands are not wider than is sufficient to turn the plough and horses upon.

It is laid down, in an old case, that if a man cut down grass, and while it is in the swathes, carry it away, and give it to his plough cattle, not having sufficient sustenance for them otherwise, no tithe is due thereof.

And in a modern case, the court of exchequer was of opinion, that no tithe is due of vetches, or of clover, cut green and given to cattle in husbandry.

*Wood.* Tithe of wood is not due in common right, because wood does not renew annually: but it was in ancient times paid in many places by custom.

Exemptions from tithes are of two kinds; either to be wholly exempted from paying any tithes, or from paying tithes in kind. The former is called *de non decimando*: the latter, *de modo decimandi*.

*Prescription de non decimando*, is to be wholly exempt from paying tithes, without any recompence for the same. Concerning which, the general rule is, that no layman can prescribe *in non decimando*; that is, to be discharged absolutely of the payment of tithes, and to pay nothing in lieu thereof; unless he begin his prescription in a religious or ecclesiastical person. But all spiritual persons, as bishops, deans, prebendaries, parsons, and vicars, may prescribe generally *in non decimando*.

*A modus decimandi*, usually called by the name of *modus* only, is where there is by custom a particular manner of tithing, different from the general laws of taking tithes in kind. This is sometimes a pecuniary compensation, as so much an acre for the tithe of land: sometimes a compensation in work and labour, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him: sometimes in lieu of a large quantity, when arrived to great maturity, as a couple of fowls in lieu of tithe eggs, and the like. Any means, in short,

whereby the general law of tithing is altered, and a new method of taking them is introduced, is called a *modus decimundi*, or special method of tithing.

In order to make a *modus* or prescription good, several qualifications are requisite. It must be supposed to have had a reasonable commencement, as that at the time of the composition the *modus* was the real value of money, it is now become much less. It must be something for the parson's benefit; therefore finding straw for the body of the church, the finding a rope for a bell, the paying 5s. to the parish clerk, have been adjudged not to be good. But it is a good *modus* to be discharged, that one hath time out of mind been used to employ the profits for the repair of the chancel, for the parson hath a benefit by that.

A *modus* must be certain: so a prescription to pay a penny or thereabouts, for every acre of land, is void for the uncertainty. And it has been held, that if a precise day of payment be not alleged, the *modus* will be ill; but now it is holden, that where an annual *modus* hath been paid, and no certain day for the payment thereof is limited, the same shall be due and payable on the last day of the year.

A *modus* must be ancient; and therefore, if it be any thing near the value of the tithe, it will be supposed to be of late commencement, and for that reason will be set aside.

A *modus* must be durable; for the tithe in kind being an inheritance certain, the recompence for it should be as durable, therefore a certain sum, to be paid by the inhabitants of such a house, hath been set aside, because the house may go down and none inhabit it.

And it must be a constant and uninterrupted; for if there have been frequent interruptions, no custom or prescription can be obtained. But after it hath been once duly obtained, a disturbance for ten or twenty years shall not destroy it.

When a common is divided and enclosed, a *modus* shall only extend to such tithes as the common yielded before enclosure, such as the tithes of wool, lambs, or agistment; but not to the tithes of hay and corn, which the commons, whilst it was common, did never produce.

The parson cannot come himself and set out his tithes without the consent of the owner; but he may attend and see it set out; yet the owner is not obliged to give him notice when he intends to set out, unless it be by special custom.

After it is set out, the care thereof as to wasting or spoiling, rests upon the parson, and not upon the owner of the land; but the parties may spread, dry, and prepare his corn, hay, or the like, in any convenient place upon the ground, till it be sufficiently weathered, and to be carried into the barn.

**TOLL**, or **PORT TOLL**, a prescription to have port toll for all goods coming into a man's port, may be good; and this, it is said, without any consideration.



By 25 *Geo. 3. c. 57.* all carriages or horses carrying the mail were exempted from toll.

By the 52 *Geo. 3. c. 145.* reciting that whereas an exemption from toll has, by several acts for repairing turnpike roads, been granted, in respect of cattle or carriages carrying or drawing any dung, manure, or compost for manuring the land, or fodder for cattle; and that in some of the said acts there is no express provision made for any exemption from the payment of toll for and in respect of any carriage, or the cattle drawing the same, going empty for such lading, or returning empty, having been so laden; and, by reason of such omission, toll has in some cases been lately demanded and received, in respect of carriages going empty for such lading; and in other cases disputes have arisen concerning the same: and that the excluding from such exemption the case of carriages going empty for such lading, or returning empty, having been so laden, must operate to the discouragement of agriculture, and check the due improvement of land, and in many cases defeat the benefit intended by the exemption from tolls of carriages carrying dung, manure, or compost, or fodder for cattle; and that by a clause in the 13 *Geo. 3. c. 78.* it is enacted, that the regulations of weight therein before mentioned should not extend to any waggons, carts, or other carriages, employed only in husbandry, or carrying only manure for land, hay, straw, fodder, or corn unthreshed: and whereas great inconvenience will result to persons employed in husbandry if the said exemption, in respect of waggons, carts, or other carriages laden with manure, and the cattle drawing the same, should be prevented from taking place, by reason only of any empty basket or baskets, empty sack or sacks, being in or upon the same, if the loading thereof is substantially manure, hay, straw, fodder, or corn unthreshed: and whereas great uncertainty has prevailed as to the tolls claimed on carriages or horses liable to separate tolls, when affixed, tied, or secured to some waggon, cart, or other carriage, and much inconvenience has arisen therefrom: it is therefore enacted, that from and after the 25th of September, 1812, in every case in which, under any act of parliament for making, widening, and enlarging, repairing, or otherwise relating to any turnpike road, there is an exemption from toll or duty in respect of any horse, mule, ass, ox, waggon, cart, or other carriage, carrying or drawing any dung, mould, soil, marl, lime, or compost, of any nature or kind soever, for manuring or improving the land, or hay, straw, or any other fodder for cattle, such exemption shall extend in respect of every such waggon, &c. and also in respect to the cattle drawing the same, going empty, or loaded only with implements necessary for more convenient carriage, or loading or unloading such lading, or returning empty, or with such implements as aforesaid, having been so laden, notwithstanding the said waggon, &c. shall, for the purposes aforesaid, go to or return from any parish or place in which the said turnpike road does not lie.

To prevent frauds, the tolls on empty carriages to be first paid, and afterwards returned, on pain of the toll collector forfeiting to the owner of the waggon, &c. not less than 10s. nor more than 40s.

Persons aggrieved to appeal to justices of the peace of the place where the offence was committed. The trustees of roads to release lessees of tolls from their contracts at Michaelmas next, should they desire it. And in case of the lessees, &c. of tolls, wishing to determine their contracts, trustees, &c. are to re-let the tolls.

The regulations of weight in the 13 G. 3. c. 78. are to extend to manure waggons, &c. by reason of their having empty baskets, sacks, &c.

Where any coach, or other four-wheeled carriage, shall pass through any turnpike gate, tied to any waggon or cart, it shall be liable to the same toll, and no more, as if it had passed through the said turnpike gate drawn by two horses; and in case any chair, cart, or other carriage whatsoever, with two wheels only, shall pass through any turnpike gate, so tied to any waggon or cart as aforesaid, it shall be liable to the same toll, and no more, as the same would have been if passing through the said gate drawn by one horse only; and where any horse shall be fastened to but not used in drawing any waggon, cart, or other carriage, such horse shall not be liable to a higher toll than a single horse; provided, that if any coach, chariot, chaise, chair, cart, or other carriage, so tied to any waggon or cart, shall have any goods conveyed therein, other than the harness thereof, and such articles of packages as may be necessary for the protection of such carriages, the same shall be liable to double the toll hereby imposed.

TRANSPORTATION, is the banishing or sending away a criminal into another country.

If any offender, ordered to be transported, shall return into Great Britain or Ireland before the end of his term, he shall be liable to be punished as a person attainted of felony, without benefit of clergy, and execution shall be awarded against him accordingly.

By 42 Geo. 3. c. 28. his majesty may appoint an inspector of the places of confinement, authorized by 24 Geo. 3. c. 56. who shall report the particulars and state of such places to parliament at the beginning of every session; and, in cases of necessity, to the court of king's bench: but the inspector's salary is not to exceed 350*l.* per annum.

By 43 Geo. 3. c. 15. his majesty may, by his sign manual, give a property in the service of offenders transported in ships belonging to his majesty, without security being given for their transportation by his officers.

TREASON, is divided into high treason and petty treason; *high treason* is defined to be an offence committed against the security of the king or kingdom, whether it be by imagination, word, or



deed; as to compass or imagine the death of the king, queen, or prince; or to deflower the king's wife, or his eldest daughter unmarried; or his eldest son's wife; or levy war against the king in his realm, adhere to his enemies, counterfeit his great seal, privy seal, or money, or wittingly to bring false money into this realm counterfeited like the money of England, and utter the same. To kill the king's chancellor, treasurer, justices of either bench, justices in eyre, of assize, or of *oyer* and *terminer*, being in their place doing this office. Forging the king's sign manual, or privy signet, privy seal, or foreign coin current here, or diminishing or impairing current money. In case of treason, a man shall be drawn, hanged, and quartered, and forfeit his lands and goods to the king.

*Petit treason* is, whenever a wife murders her husband, a servant his master or mistress, or an ecclesiastic a prelate, or to whom he owes obedience; every one of these offences is *petit treason*.

As every *petit treason* implies a murder, it follows, that the mere killing of an husband, master, or prelate, is not always *petit treason*; for if there are not such circumstances in the case of killing one of these persons as would have made it murder in the case of killing any other person, it does not amount to this offence.

There can be no accessory in high treason.

And it seems to be always agreed, that what would have made a man an accessory before the fact in any other felony, makes him a principal in high treason.

As the person of his majesty was imagined in imminent danger, it was thought necessary to enact two law statutes, viz. 36 G. 3. c. 7. and 36 G. 3. c. 8. the former to enlarge the clauses in the stat. 25 Ed. 3. for the greater safety of his majesty's person; the latter for the preventing seditious meetings. But on account of the too great length of the acts, we are obliged to refer the reader thereto.

By 39 and 40 Geo. 3. c. 93. in cases of high treason, and misprision of treason, where the overt act alledged in the indictment shall be assassination of the king, or any direct attempt against his life, the offender shall be tried in the same manner as if charged with murder, but punishable as in cases of high treason, notwithstanding 7 W. 3. c. 3. or 7 Anne, c. 21.

**TREASURER OF THE COUNTY.** The justices of the peace in sessions may appoint treasurers, from time to time, of the county rates, and allow them salaries not exceeding 20*l.* a year: which treasurers shall keep books of entries of all receipts and disbursements by them made, and account for the same to the said justices in sessions.

There are two treasurers 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 50*l.* in personal estate, and shall not continue in their office above a year; and they are to account

yearly at the quarter sessions, or within ten days after, to their successors, under penalties.

**TRESPASS**, is any transgression of the law, under treason, felony, or misprision of either.

Trespass signifies going beyond what is lawful; hence it follows, that every injurious act is, in the large sense of this word, a trespass. But as many injurious acts are distinguished by particular names, as treason, murder, rape, and other names, the legal sense of the word trespass is confined to such injurious acts as have not acquired a particular name. Some trespasses are not accompanied with any force: a trespass of this sort is called a trespass upon the case; and the proper remedy for the party injured is by an action upon the case. Other trespasses are accompanied with force, either actual or implied. If a trespass, which was accompanied with either actual or implied force, have been injurious to the public, the proper remedy in every such case is by an indictment, or by information. And if a trespass that was accompanied with an actual force have been injurious only to one or more private persons, the offender is in every such case liable to an indictment, or to an information; for although the injury has in such case been only done to one or more private persons, as every trespass accompanied with actual force is a breach of the peace, it is to be considered and punished as an offence against the public.

A man is answerable for not only his own trespass, but that of his cattle also.

And the law gives the party injured a double remedy in this case, by permitting him to distrain the cattle thus doing damage, till the owner shall make him satisfaction; or else by leaving him to the common remedy by action. And in either of these cases of trespass committed on another's land, either by a man himself or his cattle, the action that lies is the action of trespass, with force and arms; for the law always couples the idea of force with that of intrusion upon the property of another.

In some cases trespass is justifiable; or rather entry on another's land or house shall not in these cases be accounted trespass; as if a man came there to demand or pay money there payable, or to execute, in a legal manner, the process of the law.

To prevent trifling and vexatious actions of trespass, it is enacted, by 43 *Eliz. c. 6.* 22 and 23 *Car. 2. c. 9.* and 8 and 9 *W. c. 2.* that where a jury who try an action of trespass give less damages than 40s. the plaintiff shall be allowed no more costs than damages, unless the judge shall certify on the back of the record that the freehold or title of the land came chiefly in question. But if it shall appear that the trespass was wilful and malicious, the plaintiff shall have his full costs. And every trespass is wilful where the defendant has been forewarned, and malicious where the intent of the defendant appears to be to harass or injure the plaintiff.

**TROVER**, is the remedy prescribed by the law where any person is in possession of the property of another, which he unlaw-



fully detains. Previous to commencing this action, a demand of the property so detained must be made in writing by some person properly authorized by the owner of the property; and upon refusal to restore it, the law presumes an unlawful conversion; and the party is entitled to this action, and will recover damages to the value of the property detained. As trover implies trespass, the smallest damages will carry costs. A similar action may be brought for the unlawful detention of any property, on which the specific articles so detained may be recovered; but as articles detained must be precisely stated in the declaration, and is attended with some difficulty, this action is very seldom brought.

TRUST, is a right to receive profits of land, and to dispose of the land in equity. And one holding the possession and disposing thereof at his will and pleasure are signs of trust.

A trust is but a new name given to an use, and invented to evade the statute of uses.

*What is a declaration of trust, and when a trust shall be raised.* By stat. 29 C. 2. c. 3. all declarations or creations of trusts shall be manifested by some writing signed by the party, or by his last will in writing, or else shall be void. And by sect. 9. of the same act, assignments of trusts shall be in writing, signed by the party assigning the same, or by his last will, or else shall be of no effect.

*What shall be deemed a trust by implication.* By 29 Car. 2. all declarations of trusts were to be made in writing; but in the said act there is a saving with regard to trusts resulting by implication of law, which are left on the footing whereon they stood before the act; now a bare declaration by parol before the act would prevent any resulting trust.

If a man purchase lands in another's name, and pay the money, it will be a trust for him that paid the money, though there be no deed made declaring the trust thereof; for the statute of frauds and perjuries extends not to trusts raised by operations of law.

*Charitable trusts.* By the 52 Geo. 3. in order to provide a summary remedy in cases of abuses of trusts created for charitable purposes, it is enacted, that in cases of breach of trust, a petition is to be presented to the lord chancellor, &c. who shall hear the same in a summary way, and make order therein, and such order shall be final and conclusive, unless the party who shall think himself aggrieved thereby shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the house of lords, to whom it is enacted and declared that an appeal shall lie from such order.

Every petition so to be preferred shall be signed by the persons preferring the same, in the presence of, and shall be attested by the solicitor or attorney concerned for such petitioners; and every such petition shall be submitted to, and be allowed by, his ma-

jesty's attorney or solicitor-general; and such allowance shall be certified by him before any petition shall be presented. And neither the petitions, nor any proceeding upon the same or relative thereto, nor the copies of any such petitions or proceedings, shall be subject or liable to the payment of any stamp duty whatever.

**TURNPIKES.** If any person shall pull down, or otherwise destroy any turnpike-gate, post, chain, bar, or other fence, or any house erected for the use of such gate, he shall be guilty of felony, and transported for seven years.

**VAGRANTS,** are all persons threatening to run away and leave their wives and children to the parish: all persons unlawfully returning to the parish or place whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong: all persons who have not wherewith to maintain themselves, live idle, and refuse to work for the usual wages given to other labourers in the like work, in the parishes or places where they are: all persons going from door to door, or placing themselves in the streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell.

All these shall be deemed idle and disorderly persons; and one justice may commit such offenders (being thereof convicted before him, by his own view, confession, or oath of one witness) to the house of correction, to hard labour, not exceeding one month. And any person may apprehend and carry before a justice any such persons going from door to door, or placing themselves in the streets, highways, or passages, to beg alms in the parishes or places where they dwell; and if they shall resist, or escape from the person apprehending them, they shall be punished as rogues and vagabonds. And the said justice, by warrant under his hand and seal, may order any overseer where such offender shall be apprehended to pay 5s. to any person in such parish or place so apprehending them, for every offender so apprehended; to be allowed in his accounts, on producing the justice's order, and the person's receipt to whom it was paid.

The same statute also enacts, that such justice shall order the person so apprehended to be publicly whipped by the constable, petit-constable, or some other person to be appointed by such constable or petit-constable of the place where such offender was apprehended, or shall order him to be sent to the house of correction, or the common gaol, till the next sessions, or for any less time, as such justice shall think proper.

To defray the expenses of apprehending, conveying, and maintaining rogues, vagabonds, and incorrigible rogues, and all other expenses necessary, the justices in sessions may cause such sums as shall be necessary to be raised in the same manner as the general county rate.

By 23 Geo. 3. c. 88. every person apprehended having any im-



plements for housebreaking, or any offensive weapon, with felonious intent, shall be deemed a rogue within the meaning of 17 *Geo.* 2. c. 5.

By 33 *Geo.* 3. c. 45. rogues or vagabonds ordered to be conveyed by passes agreeable to 17 *Geo.* 2. c. 5. are to be publicly whipped, or confined in a house of correction. No reward is to be paid for apprehending rogues or vagabonds until they shall have been punished. Convicts discharged from prison, and persons acquitted, may be conveyed by passes. And justices may order vagrants to be conveyed by masters of houses of correction. Justices at sessions are also to direct what rates are to be allowed for passing rogues. Soldiers and mariners wandering and begging are to be deemed vagabonds; and persons who neglect to provide for their families are to be deemed idle and disorderly.

By 43 *Geo.* 3. c. 61. every soldier and sailor, on carrying his discharge, within three days, to the nearest magistrate, shall receive a certificate of his settlement; on producing which, being in his route, he shall not, for asking relief, be deemed a vagrant.

Soldiers' wives not being permitted to embark with their husbands, shall receive from the nearest chief magistrate a like certificate, which shall entitle them to ask relief on their route.

New certificates are to be given in case of accident or sickness. And passes from the admiralty or war-office shall have the same effect as heretofore.

**VENUE**, the neighbourhood from whence juries are to be summoned for trial of causes. In local actions, as of trespass and ejectment, the venue is to be from the neighbourhood of the place where the lands in question lie; and in all real actions the venue must be laid in the county where the thing is for which the action is brought. But in transitory actions, for injuries that may have happened any where, as debt, detinue, slander, or the like, the plaintiff may declare in what county he pleases; and then the trial must be in that county in which the declaration is laid. Though if the defendant will make affidavit that the cause of action, if any, arose not in that, but in another county, the court will direct a change of the venue, and oblige the plaintiff to declare in the proper county. And the court will sometimes move the venue from the proper jurisdiction (especially of the narrow and limited kind) upon a suggestion, duly supported, that a fair and impartial trial cannot be had therein.

With respect to criminal cases, it is ordained by stat. 21 *Jac.* 1. c. 4. that all informations on penal statutes shall be laid in the counties where the offences were committed.

**VERDICT**, the answer of a jury made upon any cause, civil or criminal, committed by the court to their examination; and this is twofold, general, or special.

*A general verdict*, is that which is given or brought into the court in like general terms to the general issue; as in an action of disseisin the defendant pleadeth no wrong, no disseisin; then the issue is general, whether the fact be wrong or not, which being com-

mitted to the jury, they, upon consideration of the evidence, come in and say, either for the plaintiff, that it is a wrong and disseisin; or for the defendant, that it is no wrong, no disseisin.

A *special verdict*, is when they say at large, that such a thing and such a thing they find to be done by the defendant or tenant, so declaring the course of the fact as in their opinion it is proved; and as to the law upon the fact, they pray the judgment of the court; and this special verdict, if it contain any ample declaration of the cause from the beginning to the end, is also called a verdict at large.

A special verdict is usually found where there is any difficulty or doubt respecting the laws when the jury state the facts as proved, and pray the advice of the court thereon. A less expensive, and more speedy mode, however, is to find a verdict generally for the plaintiff, subject nevertheless to the opinion of the judge, or the court above, on a special case drawn up and settled by counsel on both sides.

VESTRY, a place adjoining to a church, where the vestments of the minister are kept; also a meeting at such place where the minister, churchwardens, and principal men of most parishes do at this day make a parish vestry. On the Sunday before a vestry is to meet, public notice ought to be given, either in the church or after divine service is ended, or else at the church door as the parishioners come out, both of the calling of the said meeting, and also the time and place of the assembling of it; and it is reasonable then also to declare for what business the said meeting is to be held, that none may be surprised, but that all may have full time before to consider of what is to be proposed at the said meeting.

VICAR, one who supplies the place of another. The priest of every parish is called rector, unless the prædial tithes are appropriated, and then he is styled vicar; and when rectories are appropriated, vicars are to supply the rector's place. For the maintenance of the vicar, there was then set apart a certain portion of the tithes, commonly about a third part of the whole, which are now what are called the vicarial tithes, the rest being reserved to the use of those houses which, for the like reason, are determinated the rectorial tithes.

VICARAGE. For the most part vicarages were endowed upon appropriation; but sometimes vicarages have been endowed without any appropriation of the parsonage; and there are several churches where the tithes are wholly impropriated, and no vicarage endowed; and there the impropiators are bound to maintain curates to perform divine service, &c. The parsons, patron, and ordinary, may create a vicarage, and endow it; and in time of vacancy of the church, the patron and ordinary may do it; but the ordinary alone cannot create a vicarage without the patron's assent.

VICINAGE, *common of vicinage*, is where the inhabitants of two townships, which lie contiguous, have usually intercommoned with one another, the beasts of the one straying mutually into the



other's fields without any molestation from either. This indeed is only a permissive right, intended to excuse what in strictness is a trespass in both, and to prevent a multiplicity of suits; and therefore neither township may enclose and bar out the other, though they have intercommoned time out of mind. Neither hath any person of one town a right to put his beasts originally into the other's common; but if they escape and stray there of themselves, the law winks at the trespass.

VIEW, is generally where a real action is brought in any of the courts of record at Westminster, and it shall appear to the court to be proper and necessary that the jurors should have a view, they may order special writs of *distringas* or *habeas corpora* to issue, commanding the sheriff to have six of the first twelve of the jurors therein named, or of some greater number of them, at the place in question, &c. But as the having a view was not a matter of course, though such a practice had prevailed, and had been abused to the purposes of delay, the court thought it their duty to take care that their ordering a view should not obstruct justice, and prevent the cause from being tried; and they resolved not to order one any more without a full examination into the propriety and necessity of it. For they were all clearly of opinion that the act of parliament meant that a view should not be granted, unless the court were satisfied that it was proper and necessary; and they thought it better that a cause should be tried upon a view had by any six, or by fewer than six, or even without any view, than be delayed for any greater length of time.

VILLAIN, or VILLEIN, a man of servile or base degree.

Of these bondmen, or villeins, there were two sorts in England, one termed a villain in gross, who was immediately bound to the person of his lord and his heirs. The other villain regardant to a manor, being bound to his lord as a member belonging and annexed to a manor whereof the lord was owner.

Both villains regardant and villains in gross were transferable by deed from one owner to another; they could not leave their lord without his permission; but if they ran away, or were purloined from him, might be claimed and recovered by action, like beasts or other chattels. They held indeed small portions of land to sustain themselves and families, but it was at the mere will of the lord, who might dispossess them whenever he pleased. A villain could acquire no property either in lands or goods; but if he purchased either, the lord might enter upon him, and seize them to his own use.

UMPIRAGE, is where two persons, being appointed arbitrators, in consequence of not agreeing in opinion, appoint some person to decide the difference; the party so appointed is in such case termed the umpire, and his determination the umpirage.

Any person who is not under a legal incapacity may be appointed an umpire. And it has been determined that arbitrators may nominate an umpire before they proceed to consider the sub-

ject referred to them : and so far is this from putting an end to their authority, that it is the fairest way of choosing an umpire.

The duty of an umpire is, finally to determine on the whole subject in dispute, where the arbitrators cannot do it ; and by adopting their opinion as far as they agree, and incorporating it with his own on the other points, he effectually makes such final determination.

USANCE. See BILLS OF EXCHANGE.

USE, is a trust and confidence reposed in another who is tenant of the land, that he shall dispose of the land according to the intention of *cestuy que use*, or him to whose use it was granted, and suffer him to take the profits.

By stat. 27 Hen. 8. c. 10. commonly called the statute of uses, or the statute for transferring uses into possession, the *cestuy que use* is considered as the real owner of the estate ; whereby it is enacted that when any person is seised of lands to the use of another, the person intitled to the use in fee-simple, fee-tail, for life or years, or otherwise, shall stand and be seised or possessed of the land, in the like estate, as he hath of the use, trust, or confidence. And thereby the act makes *cestuy que use* complete owner both at law and in equity.

USURY, in a strict sense, is a contract upon the loan of money, to give the lender a certain profit upon the use of it, upon all events, whether the borrower made any advantage of it, or the lender suffered any prejudice for want of it, or whether it be repaid on the appointed time or not ; and in a large sense, it seems, that all undue advantages taken by a lender against a borrower came under the notion of usury.

The stat. 12 Anne, c. 16. enacts that no person upon any contract which shall be made shall take for loan of any money, wares, &c. above the value of 5*l.* for the forbearance of 100*l.* for a year ; and all bonds and assurances for the payment of any money to be lent upon usury, whereupon or whereby there shall be reserved or taken above five pounds in the hundred, shall be void ; and every person who shall receive, by means of any corrupt bargain, loan, exchange, shift, or interest, of any wares or other things, or by any deceitful way, for forbearing, or giving day of payment for one year, for their money or other things, above 5*l.* for 100*l.* for a year, &c. shall forfeit treble the value of the monies or other things lent.

But if a contract, which carries interest, be made in a foreign country, our courts will direct the payment of interest according to the law of that country in which the contract was made. Thus Irish, American, Turkish, and Indian interest have been allowed in our courts, to the amount of each 12*l.* per cent. For the moderation or exorbitance of interest depends upon local circumstances ; and the refusal to enforce such contracts would put a stop to all foreign trade.

WAGER OF LAW, is a particular mode of proceeding, where-



by in an action of debt brought upon a simple contract between the parties, without any deed or record, the defendant may discharge himself by swearing in court, in the presence of compurgators, that he owes the plaintiff nothing, in manner and form as he has declared, and his compurgators swear that they believe what he says is true. And this waging his law, is sometimes called making his law.

It being at length considered that this waging of law offered too great a temptation to perjury, by degrees new remedies were devised, and new forms of action introduced, wherein no defendant is at liberty to wage his law.

Instead of an action of debt upon a simple contract, an action is now brought for the breach of a promise, or assumpsit, wherein though the specific debt cannot be recovered, yet damages may, equivalent to the specific debt: and this being an action of trespass, no law can be waged therein. So instead of an action of detinue to recover the very thing detained, an action of trespass upon the case, in trover, and conversion is usually brought, wherein though the specific thing cannot be had, yet the defendant shall pay damages for the conversion equal to the value thereof; and for this trespass also no wager of law is allowed. In the place of actions of account, a bill in equity is usually filed, wherein, though the defendant answers upon his oath, yet such oath is not conclusive to the plaintiff, but he may prove every article, by other evidence, in contradiction to what the defendant hath sworn. So that wager of law is now quite out of use, being avoided by the mode of bringing the action, but still is not out of force. And therefore when a new statute inflicts a penalty, and gives an action of debt to recover it, it is usual to add, in which no wager of law shall be allowed.

**WAGERS.** In general a wager may be considered as legal, if it be not an incitement to a breach of the peace, or to immorality; or if it do not affect the feelings or interest of a third person, or expose him to ridicule; or if it be not against sound policy.

But it has lately been determined that no action will lie on a wager respecting the mode of playing an unlawful game; and, if such a cause is set down to be tried, the judge at *nisi prius* is justified in ordering it to be struck out of the paper.

**WAIFS,** are goods which are stolen and waved by a felon in his flight from those who pursue him, which are 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 flee and leave his own goods, these will be forfeited as goods stolen; but they are properly fugitive's goods, and not forfeited till it be found before the coroner, or otherwise of record, that he fled for the felony.

**WALES.** By stat. 27 *H. 8. c. 26.* and other subsequent statutes, the dominion of Wales shall be incorporated with, and form part of, the realm of England; and all persons born in Wales shall enjoy all liberties and privileges as the subjects in England do. And the

lands in Wales shall be inheritable after the English tenure, and not after any Welsh laws or customs. And the proceedings in all the law courts, shall be in the English tongue. A session is also to be held twice a year in every county, by judges appointed by the king, to be called the great sessions of the several counties in Wales, in which all pleas of real and personal actions shall be held, with the same form of process, and in as ample manner, as in the court of common pleas at Westminster; and writs of error shall lie from judgments therein to the court of king's bench at Westminster. But the ordinary original writs, or process of the king's courts at Westminster, do not run into the principality of Wales; though process of execution does, as also all prerogative writs; as writs of *certiorari*, *quo minus*, *mandamus*, and the like.

Murders and felonies in any part of Wales, may be tried in the next adjoining English county; the judges of assize, having a concurrent jurisdiction throughout all Wales, with the justices of the grand sessions.

All local matters arising in Wales, triable in the king's bench, are by the common law to be tried by a jury, returned from the next adjoining county in England.

No sheriff or officer in Wales, shall, upon any process out of the courts at Westminster, hold any person to special bail, unless the cause of action be 20*l.* or upwards.

WARDMOTE, a court kept in every ward in London; usually called the wardmote court: and the wardmote inquest hath power every year to inquire into, and present all defaults concerning the watch, and constables not doing their duty; that engines, &c. be provided against fire; persons selling ale and beer be honest, and suffer no disorders, not permit gaming, &c. that they sell in lawful measures; and searches be made for vagrants, beggars, and idle persons, &c. who shall be punished.

WARDSHIP, when the tenant died, and his heir was under the age of twenty-one, being a male, or fourteen, being a female, the lord was entitled to the wardship of the heir, and was called the guardian in chivalry. This wardship consisted in having the custody of the body and lands of such heir, without any account of the profits, till the age of twenty-one in males, and fourteen (which was afterwards advanced to sixteen) in females. For the law supposed the heir male unable to perform knight's service till twenty-one; but as for the female, she was supposed capable at fourteen to marry, and then her husband might perform the office.

WARRANT, a præcipe under hand and seal to some officer to bring any offender before the person granting it; and warrants of commitment are issued by the privy council, a secretary of state, or justice of peace, &c. where there hath been a private information, or a witness had deposed against an offender.

Any one under the degree of nobility may be arrested for a misdemeanor, or any thing done against the peace of the kingdom, by



warrant from a justice of the peace; though if the person be a peer of the realm, he must be apprehended for a breach of the peace by warrant out of B. R.

A constable ought not to execute a justice's warrant, where the warrant is unlawful, or the justice hath no jurisdiction; if he do he may be punished.

But if any person abuse it, by throwing it 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.

A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty: for it is the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of the suspicion. Also a warrant to apprehend all persons guilty of such a crime, is no legal warrant; for the point upon which its authority rests, is a fact to be decided on a subsequent trial; namely, whether the person apprehended thereupon be guilty or not guilty.

A warrant may be lawfully granted by any justice, for treason, felony, or præmunire, or any other offence against the peace, and it seems clear, that where a statute gives any one justice a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such a statute, it impliedly gives a power to every such justice to make out a warrant to bring before him any one accused of such offence, or compelled to do any thing ordained by such statute; for it cannot but be intended, that a statute which gives a person jurisdiction over an offence, means also to give him the power incident to all courts of compelling the party to come before him.

But in cases where the king is not a party, or where no corporal punishment is appointed, as in case for servants' wages and the like, it seems that a summons is the more proper process; and for default of appearance, the justice may proceed; and so indeed it is often directed by special statutes.

A warrant from any of the justices of the court of king's bench extends over all the kingdom, and is tested or dated England: but a warrant of a justice of peace in one county, must be backed, that is, signed by the justice of another county, before it can be executed there. And a warrant apprehending an English or a Scotch offender, may be indorsed in the opposite kingdom, and the offender carried back to that part of the united kingdom in which the offence was committed.

WARRANTY, 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 any thing agreed on between them.

Warranty is either real or personal; real, when it is annexed to lands or tenements granted for life, &c. And this is neither in deed, as by the word *warrantizo* expressly; or in law, as by the word *dedi*, or some other amplification.

Personal, which either respects the property of the thing sold, or the quality of it.

Warranties in their more general divisions are of two kinds: first, a warranty in deed, or an express warranty, which is when a fine, or feoffment in fee, or a lease for life is made by deed, which has an express clause of warranty contained in it, as when a conusor, feoffor, or lessor, covenants to warrant the land to the conusee, feoffee, or lessee; secondly, a warrant in law, or an implied warranty, which is, when it is not expressed by the party, but tacitly made and implied by the law.

A warranty in deed is either lineal or collateral. A lineal warranty is a covenant real, annexed to the land by him, who either was owner of or might have inherited the land, and from whom his heir lineal or collateral, might possibly have claimed the land as heir from him that made the warranty. A collateral warranty is made by him that had no right, or possibility of right, to the land, and is collateral to the title of the land.

WARREN, 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 conies, partridges, pheasants, and some add quails, woodcocks, and waterfowl.

These were looked upon as royal game, and the franchise of free warren was invented to protect them, by giving the grantee a sole and exclusive power of killing such game, so far as his warren extended, on condition of his preventing other persons; for, by the common law, no man, not even the lord of a manor, could justify killing game on another man's soil, unless he had the liberty of free warren.

WASTE, is the committing any spoil or destruction in houses, lands, &c. by tenants, to the damage of the heir, or of him in reversion or remainder: whereupon the writ, or action of waste, is brought for the recovery of the thing wasted, and damages for the waste done.

There are two kinds of waste, voluntary or actual, and negligent or permissive. Voluntary waste may be done by pulling down or prostrating houses, or cutting down timber trees: negligent waste may be, by suffering an house to be uncovered, whereby the spars or rafters, planches or other timber of the house are rotten.

A writ of waste, to punish the offence after it has been committed, is an action partly founded upon the common law, and partly upon the statute of Gloucester, and may be brought by him that has the immediate estate of inheritance in reversion or remainder, against the tenant for life, tenant in dower, tenant by the courtesy, or tenant for years.

This action of waste is a mixed action; partly real, so far as it recovers land, and partly personal, so far as it recovers damages, for it is brought for both those purposes; and if the waste be proved, the plaintiff shall recover the thing or place wasted, and also treble damages by the said statute.



The writ of waste, calls upon the tenant to appear and show cause why he hath committed waste and destruction in the place named, to the dishersion of the plaintiff. And if the defendant make default, or do not appear at the day assigned him, then the sheriff is to take with him a jury of twelve men, and go in person to the place alledged to be wasted, and there inquire of the waste done, and the damages; and make a return or report of the same to the court, upon which report the judgment is founded.

**WATCH AND WARD.** Watching is properly intended in the night, and warding for the day time.

Persons aggrieved by assessments, for watch and ward, may appeal to the mayor.

By the 52 *G. 3. c. 17.* until the 1st day of March, 1814, the *custos rotulorum*, or in his absence the sheriff, or any five justices of the peace, acting in and for any county in England, may from time to time, so often as occasion shall require, (in case any disturbances or offences against the peace prevailing, or being apprehended, within the county, shall in his or their opinion render the execution of this act advisable and necessary) by order, under his or their hands and seals, convene and assemble a special general sessions of the justices by notice given and put upon the church doors and conspicuous places of the market-places of the several parishes and places in which such disturbances be or are apprehended, to take into consideration the expediency of executing this act. The justices in such special general sessions are to adjudge and declare the state of the peace in the county, and the expediency of executing this act. They are to summon witnesses, and make compensation to them; and the justices in a special sessions are to order the chief constables to require lists to be made by petty constables of all men above the age of 17, paying poor rates, to be returned to them at such special, or to any petty sessions; and the constables are to return such lists, and give notice to the parties named therein, mentioning the time and place of appeal. The said justices, at any special or petty sessions, or any two of them, may, from such lists, appoint such number of inhabitants as they shall think necessary to keep watch in every such parish, township, or place, every night, from sun set till sun rise, and also to keep the ward during the day time, if need shall require; and shall also determine, settle, or arrange the order, rotation, and time, in which every such person shall undertake and perform the same, and regulate the manner in which the duty shall be performed; and when there are not sufficient persons paying to the poor rate for watching and warding in any place, the justices are to require other lists, and appoint therefrom others to watch and ward, at a compensation for their services.

The special sessions shall appoint special constables to regulate watch and ward, and if necessary, the *custos rotulorum*, or sheriff, or five justices as aforesaid, may direct the act to be put in execution before the special general sessions. The chief constables are to

visit once a week every parish, and report the state of the watching and warding there.

Persons refusing to watch or ward are to forfeit not exceeding 10*l.* nor less than 40*s.* but justices may exempt persons above fifty years of age, not occupying 20*l.* a-year, and persons may provide substitutes, approved by petty sessions or chief constables.

Constables are, at the expense of parishes, out of the poor rates, to provide rattles, staves, lanthorns, and such weapons, arms, and accoutrements as the special or petty sessions shall direct for the use of every person so keeping watch or ward; the same to be returned back when the duty shall cease.

Every person so appointed to watch or to ward, shall, during the time, to the utmost of his power, prevent all murders, burglaries, robberies, affrays, and all felonies, outrages and disorders, and for that end shall arrest all night-walkers, malefactors, rogues, vagabonds, and other loose, idle, disorderly, and suspicious persons, and deliver them over to the constable or watch-house, or other places of security until taken before a justice.

Those keeping watch and ward are to assist those in adjoining districts, and the constables are to report the conduct of persons watching or warding.

Such compensation is to be made out of the poor rates to special constables and other persons watching and warding as the special sessions shall direct. If any one shall assault any person watching or warding, he shall forfeit not exceeding 20*l.* and be moreover liable to be indicted as for assaulting a constable in the execution of his office. Any victualler or keeper of a public-house, harbouring any person engaged in watching or warding during the time, shall for the first offence forfeit 40*s.* for the second 5*l.* and for the third and every other 10*l.*; and justices may remove persons not being house-holders or settled in the parish, who are suspected, on oath, to be dangerous to the peace, or of abetting disturbances, to the places of their last legal settlement. The penalties are recoverable before one justice, and may be levied by distress.

**WAY.** A way may be by prescription, as if the owners and occupiers of such a farm have immemorially used to cross another's ground; for this immemorial usage supplies an original grant. A right of way may also arise by act and operation of law; for if a man grant to another a piece of ground in the middle of his field, he at the same time tacitly gives him a way to come at it, for where the law gives any thing to any person, it gives implied whatever is necessary for enjoying the same.

**WEIGHTS AND MEASURES,** the standard of measures was originally kept at Winchester, which measure was by the law of King Edgar, ordained to be observed through the kingdom.

By stat. 35 *Geo. 3. c. 102.* the justices in quarter sessions (or petty sessions, by 37 *Geo. 3. c. 143. s. 1.*) in every county, are required to appoint persons to examine the weights and balances within their respective jurisdictions. These inspectors may seize and examine



weights in shops, &c. and seize false weights and balances, and the offender being convicted before one justice, shall be fined from 5s. to 20s. Persons obstructing the inspectors, to forfeit from 5s. to 40s. Inspectors to be recompensed out of the county-rate. Standard weights to be purchased by the sessions out of the county-rate, and produced to all persons paying for the production thereof: Informations to be within one month.

By 37 Geo. 3. c. 143. the justices at their petty sessions, may appoint persons to examine weights and balances. The examiners, when directed by the justices, may visit shops and other places, and seize false weights and balances; and persons having the same, on conviction at such petty sessions, are to forfeit not exceeding 20s. nor less than 5s. to be levied by distress. Justices are to cause false weights and balances to be broken, and the produce of the materials and forfeitures to be paid to the county treasurer. If the majority of inhabitants wish that any persons should be specially appointed examiners, they may in vestry nominate them for the approbation of the justices. But no such appointment shall be made till the inhabitants have procured standard weights, the costs of which, and the recompense to the examiners, shall be paid out of the poor rates.

WILL AND TESTAMENT, is that disposition of property which is made by a person to take place after his decease. Every person capable of binding himself by contract, is capable of making a will.

Also a male infant of the age of fourteen years and upwards, and female of twelve years or upwards, are capable of making a will respecting personal estates only.

But a married woman cannot make a will, unless a power be reserved in a marriage settlement; but wherever personal property, however, is given to a married woman for her sole and separate use, she may dispose of it by will.

If a feme sole make her will, and afterwards marry, such marriage is a legal revocation of the will.

Wills are of two kinds, *verbal* or *nuncupative* and *written*; the latter one is more secure.

It may, however, be observed that a blind person may make a verbal or nuncupative will, by declaring his intentions before a sufficient number of witnesses; and he may also make a will in writing, provided the will be read to him before witnesses, and in their presence acknowledged by him for his last will; but if a writing should be delivered to a blind man, and he not hearing the same read, acknowledge the same for his will, this will not be sufficient. The safer way, therefore, (in Dr. Burn's judgment) in cases of blind and illiterate persons, is, that the will be read over to the testator, and be approved by him in the presence of all the subscribing witnesses.

But persons born blind, deaf, and dumb, are utterly incapable of making a will, for they want the common inlets of understanding;

unless it manifestly appears, by strong and convincing proof, that such persons understand what a will means, and that they have a desire to make a will; for if they are possessed of such understanding and desire, then they may, by signs and tokens, declare their intention.

It is not absolutely necessary that a will should be witnessed; and a testament of chattels, written in the testator's own hand, though it have neither the testator's name nor seal to it, nor witnesses present at its publication, will be good, provided sufficient proof can be had that it is his handwriting.

By stat. 29 *Car. 2. c. 3.* all devises of lands and tenements, shall not only be in writing, but shall also be signed by the party so devising the same, or by some other person in his presence, and by his express direction, and shall be witnessed and subscribed in the presence of the person devising, by three or four credible witnesses, or else the devise will be entirely void, and the land will descend to the heir at law.

A will, even if made beyond sea, bequeathing land in England, must be attested by three witnesses.

A will, however, devising copyhold land, does not require to be witnessed; it is sufficient to declare the uses of a surrender of such copyhold land made to the use of the will. The party to whom the land is given, becomes entitled to it by means of the surrender, and not by the will.

A codicil is a supplement to a will, or an addition made by the person making the same, annexed to, and to be taken as part of the will itself, being for its explanation or alteration, to add something to, or take something from the former disposition, and which may also be either written or verbal, under the same restrictions as regards wills.

If two wills are found, and it does not appear which was the former or latter, both will be void; but if two codicils are found, and it cannot be ascertained which was the first, but the same thing is devised to two persons, both ought to divide; but where either wills or codicils have dates, the latter is considered as valid, and revokes the former.

By 38 *Geo. 3. c. 37.* if at the expiration of twelve months from the testator's decease, the executor to whom probate is granted, shall not reside within the jurisdiction of his majesty's courts, a creditor next of kin, or legatee, may obtain a special administration on a 5s. stamp.

The court of equity, in which a suit may be depending, may appoint persons to collect out-standing debts.

Stock belonging to the estate of the deceased, may be transferred into the name of the accountant-general in chancery, in trust for such purposes as the court shall direct in any suit; and executors, returning to reside within the jurisdiction of the court shall be made parties to the suit.

Where an infant is sole executor, administration, with the will



annexed, shall be granted to the guardian till the infant is twenty-one, who shall have the same power as an administrator *durante minoritate*.

By 39 and 40 *Geo. 3. c. 98.* no person, by deed or will, shall settle or dispose of any real or personal property, in such manner that the rents or produce shall be accumulated for a longer time than the life of the settler, or twenty-one years after his decease, or during the minority of any party living at his decease, or the minorities of persons beneficially entitled: any other direction shall be void; and the rents go to such persons as would be entitled thereto, if such accumulation had not been directed.

Nothing herein, to extend to any provision for payment of debts, or for raising portions for children, or touching the produce of timber, nor to any disposition of heritable property in Scotland.

These restrictions shall take effect with respect to wills made before the 28th of July, 1800, only where the testator shall be living twelve months after.

WITCHCRAFT, by 9 *Geo. 2. c. 5.* no prosecution shall be commenced or carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence.

But, if any person shall pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration; or undertake to tell fortunes, or pretend from his skill or knowledge in any occult or crafty science, to discover where, and in what manner, any goods supposed to have been stolen or lost, may be found; he shall be imprisoned for a year, and once in every quarter of that year, stand openly on the pillory for an hour, and further shall be bound to the good behaviour as the court shall award.

WITNESS, one who is sworn to give evidence in a cause.

If a man be subpoenaed as a witness upon a trial, he must appear in court on pain of 100*l.* to be forfeited to the king, and 10*l.* together with damages equivalent to the loss sustained by the want of his evidence to the party aggrieved.

But witnesses ought to have a reasonable time, that their attendance upon the court may be of as little prejudice to themselves as possible; and the court of king's bench held, that notice at two in the afternoon to attend the sitting that evening in Westminster, was too short a time.

Where a witness cannot be present at a trial, he may by consent of the plaintiff and defendant, or by rule of court, be examined upon interrogatories at the judge's chambers.

No witness is bound to appear to give evidence in a cause, unless his reasonable expense be tendered him, and if he appear, till such charge is actually paid him, except he both resides, and is summoned to give evidence within the bills of mortality.

By 25 *Geo. 2. c. 36.* any parishioner, or inhabitant of a place, may be a witness upon any prosecution for keeping a disorderly house.

By 27 *Geo. 3. c. 29.* from August 1, 1787, the inhabitant of any

place shall be a competent witness to prove an offence, though the place may be benefited by the conviction of the offender, unless the penalty exceeds 20*l.* And by the 46 *Geo. 3. c. 37.* it is declared that a witness cannot by law refuse to answer, on the ground of subjecting himself to a suit for debt. All persons of whatsoever country or religion, and who are of sound mind, may be received and examined as witnesses; except such as are infamous, or such as are interested in the event of the cause. All others are competent witnesses; though the jury, from other circumstances, will judge of their credibility.

Thus a Mahomedan may be sworn on the Koran, and a Gentoo according to the custom of India, and their evidence may be received even in a criminal case. Quakers, who refuse to take an oath under any form, may by 7 and 8 *W. c. 34.* in civil proceedings make a solemn affirmation; and if such affirmation, like an oath, is proved to be false, they are subject to the penalties of perjury. In penal actions, as for bribery, they are also entitled to the same privilege. But no Quaker shall be permitted to give evidence in criminal causes, unless he will make oath.

An infidel in general may be admitted as a witness, for the term does not imply that he is an atheist: but no person shall be permitted to give evidence, who appears to have no idea of God or religion.

No persons convicted of felony, perjury, &c. shall be witnesses: and if one by judgment hath been whipped or stood in the pillory, he shall not for his infamy be admitted to give evidence while such judgment is in force; but the record must be produced on objecting against his testimony. A witness may be examined concerning his own infamy, provided his confession does not subject him to any future punishment: for instance, a witness may be asked, if he has not stood in the pillory for perjury.

One who has stood in the pillory and has been pardoned, may be a witness. It is the standing in the pillory for an infamous crime as forgery, &c. that disqualifies the party convicted from giving testimony. If one be pillored for a libel, he may be a witness.

Excommunicated persons cannot be witnesses, but persons outlawed may. Felons convict, who are subsequently pardoned, may be evidences, as also persons burnt in the hand. So, an informer may be a witness, though he is to have part of the forfeiture where no other evidence can be had.

For more full information on this important subject, the reader is referred to Lord Chief Baron Gilbert's admirable treatise on the Laws of Evidence.

**WOMEN.** By the 26 *Geo. 2. c. 33.* no suit shall be had in any ecclesiastical court, to compel a celebration of marriage in *facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*: and the marriage of any person under the age of twenty-one, without the consent of parents or guardians, shall be null and void.

By 20 *H. 6. c. 9.* peeresses shall be tried as peers for treason or felony.



And by stat. 3 *W. c. 9.* a woman being convicted of an offence for which a man may have his clergy, shall suffer the same punishment that a man should suffer, who has the benefit of his clergy allowed; that is, shall be burnt in the hand, and further kept in prison as the court shall think fit, not exceeding one year.

But she shall be only once entitled to the benefit of the said statute.

WOOL, either in a raw or manufactured state, has always been the principal of the staple articles of this country. The price of wool was formerly much higher in proportion to the wages of labour, the rent of land, and the price of butchers' meat than at present. It was before the time of Edward 3. always exported raw, the art of working it into cloth and dying being so imperfectly known, that no persons above the degree of working people could go dressed in cloth of English manufacture.

The first step taken to encourage the manufacture of woollen cloth was by Edward III. who procured some good workmen from the Netherlands by means of protection and encouragement. The value of wool was considered as so essentially solid, that taxes were voted in that commodity, reckoning by the number of sacks; and in proportion to the price of the necessaries of life and value of silver, wool was at least three times dearer then than it is now. The manufacturing of cloth being once introduced into the country, the policy of preventing the exportation of the raw material was soon evident; and the first act was that of *H. 4. c. 2.* by which the exportation of sheep, lambs, or rams, is forbidden under very heavy penalties.

By stat. 28 *Geo. 3.* all former statutes respecting the exportation of wool and sheep are repealed, and numerous restrictions are consolidated in that statute.

By this act if any person shall send or receive any sheep on board any vessel to be carried out of the kingdom, such vessel shall be forfeited, and the person so offending, shall forfeit 3*l.* for every sheep, and suffer solitary confinement for three months. But whether sheep, by a license from the collector of the customs, may be taken on board for the use of the ship's company; and every person who shall export any wool, or woollen articles slightly made up, so as easily to be reduced again to wool, or any fullers'-earth or tobacco-pipe clay, and every carrier, ship-owner, commander, mariner, or other person, who shall knowingly assist in exporting or attempting to export these articles, shall forfeit 3*s.* for every pound weight, or the sum of 50*l.* in the whole, at the election of the prosecutor, and shall also suffer solitary imprisonment for three months. But wool may be carried coastwise upon being duly entered, and security being given according to the directions of the statute, to the officer of the port from whence the same shall be conveyed; and the owners of sheep within five miles of the sea, and ten miles in Kent and Sussex, cannot remove the wool, without giving notice to the officer of the nearest port, as directed by the statute.

WOOLLEN CLOTH, interment in, by the 30 *Geo. 2. c. 3.* (an

act which is required to be given in charge at the assizes and sessions, and to be read four times publicly each year in the church by every parson) no corpse of any person (except of those who die of the plague) shall be buried in any shirt, shift, sheet, or shroud, or any thing made or mingled with flax, hemp, silk, hair, gold, or silver, or in any stuff or thing not made of sheep's wool only; or be put into any coffin lined or faced with any sort of clothier's stuff, or any other thing, made of any other material, than sheep's wool only, under penalty of 5*l.* to be recovered by distress and sale of the goods and chattels of the party deceased.

**WOOL-COMBERS.** By 35 G. 3. c. 124. all those who have served an apprenticeship to the trade of a wool-comber, or who are by law entitled to exercise the same, also their wives and children, may set up and exercise such trade, or any other trade or business they are apt and able for, in any town or place within this kingdom, without any molestation; nor shall such wool-combers, their wives or children, while they exercise such trades, be removeable from such place to their last legal settlement, till they shall actually become chargeable to such parish.

**WRIT**, is the king's precept, whereby any thing is commanded touching a suit or action; as the defendant or tenant to be summoned, a distress to be taken, a disseisin to be redressed, &c. And these writs are diversely divided; some in respect of their order, or manner of granting, are termed original, and some judicial.

*Original* writs are those that are sent out for the summoning of the defendant in a personal, or the tenant in a real action, before the suit begins or rather to begin the suit.

The *judicial* writs are those which are sent out by order of the court where the cause depends, upon occasion after the suit begun.

Original writs are issued out in the court of chancery, for the summoning a defendant to appear, and are granted before the suit is begun, to begin the same: and judicial writs issue out of the court where the original is returned, after the suit is begun. The originals bear date in the name of the king; but the judicial writs bear *teste* in the name of the chief justice.

**WRIT OF INQUIRY OF DAMAGES**, 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 returned with the inquisition, the rule for judgment is given upon it; and if nothing be said to the contrary, judgment is thereupon entered.

A writ of inquiry of damages, is a mere inquest of office, to inform the conscience of the court; who, if they please, may themselves assess the damages. And it is accordingly the practice, in actions upon promissory notes and bills of exchange, instead of executing a writ of inquiry, to apply to the court for a rule to show cause, why it should not be referred to the master to see what is due for principal and interest, and why final judgment should not be signed for that sum, without executing a writ of inquiry; which



rule is made absolute on an affidavit of service, unless good cause be shown to the contrary.

**YEARS** (estate for): Tenant for term of years, is where a man letteth lands or tenements to another, for a certain term of years agreed upon between the lessor and lessees, and when the lessee entereth by force of the lease, then he is tenant for term of years.

If tenements be let to a man for term of half a year, or for a quarter of a year, or any less time; this lessee is respected as tenant for years, and is styled so in some legal proceedings: a year being the shortest term, which the law in this case takes notice of.

Generally, every estate which must expire at a period certain and prefixed, by whatever words created, is an estate for years; and therefore this estate is frequently called a *term*; because its duration or continuance, is bounded, limited, and determined.

For every such estate must have a certain beginning, and certain end. If no day of commencement be named in the creation of this estate, it begins from the making or delivery of the lease. A lease for so many years as such an one live, is void from the beginning; for it is neither certain, nor can it ever be reduced to a certainty, during the continuance of the lease.

And the same doctrine holds, if a person makes a lease of his glebe for so many years as he shall continue parson of such a church, for this is still more uncertain. But a lease for twenty or more years, if the parson shall so long live, or if he shall so long continue parson, is good; for there is a certain period fixed, beyond which it cannot last, though it may determine sooner, on the parson's death, or his ceasing to be parson there.

An estate for years, though never so many, is inferior to an estate for life. For an estate for life, though it be only for the life of another person, is a freehold; but an estate, though it be for a thousand years, is only a chattel, and reckoned part of the personal estate.

Hence it follows, that a lease for years may be made to commence *in futuro*, though a lease for life cannot. As if I grant lands to one from Michaelmas next for twenty years, this is good; but to hold from Michaelmas next for the term of his natural life, is void.

For no estate of freehold can commence *in futuro*, because it cannot be created at common law without livery of seisin, or corporal possession of the land; and corporal possession cannot be given of an estate now, which is not to commence now, but hereafter. And because no livery of seisin is necessary for a lease for years, such a lessee is not said to be seised, or to have true legal seisin of the lands. Nor indeed doth the bare lease vest any estate in the lessee, but only gives him a right of entry on the tenement, which right is called his interest in the term: but when he has actually so entered, and thereby accepted the grant, the estate is then and not before, vested in him; and he is possessed, not properly of the land, but of the term of years, the possession or seisin of the land, remaining still in him who has the freehold.

**YORK.** In the county of York, only one panel of forty-eight

jurors shall be returned to serve on the grand jury at the assizes; and at the quarter sessions not above forty, either upon the grand jury or other service there.

And no person, having 150*l.* a year, shall be summoned to the sessions, but only persons less liable to bear the expense of attending at the assizes.

By stat. 4 *W. 3. c. 2.* the inhabitants of the province of York, have power to dispose of their whole personal estate by will; which before they had not, further than the testator's own proportionable part, called the *dead man's* or *death's part*. For if the testator had a wife, and a child, or children, the wife should have one third, the child or children another third, and the remaining third was all that the testator had to dispose of. If he had a wife and no child, then she should have one moiety, and the other moiety remained to him, to dispose of by his testament: so if he left a child or children, and no wife. But if he had neither wife nor child, he might dispose of the whole. In case of intestacy, the same proportions continue to the wife and children to this day; but the *dead man's* part shall be distributed according to the stat. 22 and 23 *Car. 2. c. 10.* commonly called the statute of distributions.



## A

## GLOSSARY

OF

## TECHNICAL LAW TERMS.

*ACCEDAS AD CURIAM*, a writ that lies for him who has received false judgment, or fears partiality in a court baron, or hundred court. It is directed to the sheriff, and issued out of chancery; but returnable into B. R. or C. B. and is in the nature of a writ *de falso judicio*, which lies for him that had received false judgment in the county court.

*Accedas ad Vicecomitem*, a writ directed to the coroner, commanding him to deliver a writ to the sheriff, who having a *pone* delivered to him suppresses it.

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

*Ad quod damnum*, a writ issuing out of and returnable into the chancery, directed to the sheriff, to inquire by a jury what damage it will be to the king, or any other, to grant a liberty, fair, market, highway, or the like.

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

*Caput anni*, new year's day.

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

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

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

*Cestui que trust*, is he to whose use and benefit, another man is enfeoffed of lands and tenements. Lands of *cestui que trust* may be delivered in execution.

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

*Clerico admittendo*, a writ to the bishop, for the admission of a clerk to a benefice upon a *ne admittas*, tried and found for the party who procureth the writ.

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

*Cognovit actionem*, is an acknowledgment by a defendant, or confession that the plaintiff's cause of action is just, and who to save law expenses suffers judgment to be entered against him; in this case the confession generally extends to no more than is contained in the declaration, with costs.

*Congé d'elire*. The king's permission royal to a dean and chapter, in time of vacation, to choose or elect a bishop.

*Curia*. It was usual for the king of England to assemble the bishops, peers, and other great men of the kingdom, to some particular place, at the chief festivals in the year, and this was called *curia*; because they consulted about the weighty affairs of the nation.

*Custos brevium*, a principal clerk belonging to the court of common pleas, whose office is to receive and keep all the writs returnable in that court, and put them on files, every return by itself; and at the end of every term, to receive of the *prothonotaries*, all the records of *nisi prius*, called the *postea*. The *custos brevium*, also makes entry of the writs of covenant, and the concord upon every fine, and makes further exemplifications and copies of all writs and records in his office, and of all fines levied. The fines after they are ingrossed, are to be divided between the *custos brevium* and *chirographer*, whereof the *chirographer* keeps always the writ of covenant, and the note; the *custos brevium* keeps the concord and foot of the fine. This office is in the king's gift. There is also a *custos brevium et rotulorum* in the king's bench, who files such writs as are there used to be filed, and all warrants of attorney, and transcribes, or makes out the records of *nisi prius*, &c.

*Custos rotulorum*. This officer has the custody of the rolls, or records of the session of the peace. He is always a justice of the peace, and *quorum* in the county where he has his office.

*De bene esse*, in law signification, is to accept or allow a thing as well done for the present, thus judges frequently take bail, and declarations are frequently delivered *de bene esse*, or conditionally, until special or common bail be filed.

*Debet et detinet*, are Latin words used in the bringing of writs and actions. And an action shall always be in the *debet et detinet*, when he who makes a bargain or contract, or lends money to another, or he to whom a bond is made, brings the action against him who is bounden, or party to the contract or bargain, or unto the lending of money, &c.



*Debet et solet.* If a man sue to recover any right by writ, whereof his ancestor was disseised by the tenant or his ancestor, then he uses only the word *debet* in his writ; because *solet* is improper, as his ancestor was disseised, and the custom discontinued; but if he sue for any thing that is now first of all denied, then he uses both these words *debet et solet*; because his ancestor before him, and he himself usually enjoyed the thing sued for.

*Decies tantum*, a writ that lies against a juror, who hath taken money for giving his verdict, called so of the effect, because it is to recover ten times as much as he took.

*De facto*, a thing really and actually done.

*Defeasance*, a condition relating to a deed, as to a recognisance or statute, which being performed by the recognisor, the deed is defeated, and made void, as if it had never been done. The difference between a *proviso*, or a condition in a deed, and a *defeasance*, is, that the condition is annexed to, or inserted in the deed or grant; and a *defeasance* is a deed by itself, concluded and agreed on between the parties, and having relation to another deed.

*Del credere*, commission of, is an undertaking by an insurance broker, for an additional premium, to insure his principal against the contingency of the failure of the underwriter.

*Deodand*, is where any moveable thing inanimate, or beast animate, moves or causes the death of any reasonable creature by mischance, without the will or fault of himself, or of any person.

*Diem clausit extremum*, a writ issuing out of chancery to the escheator of the county, upon the death of any of the king's tenants *in capite*, to inquire by a jury of what lands he died seised and of what value, and who was next heir to him.

*Distringas*, is a writ directed to the sheriff, commanding him to distrain one by his goods and chattels, to enforce his compliance with what is required of him.

*Donatio causa mortis*, a gift in prospect of death; where a person moved with the consideration of his mortality, gives and delivers something to another to keep in case of his decease, but if he live he is to have it again.

*Dote assignanda*, is a writ that lay for a widow, where it was found by office, that the king's tenant was seized of tenements in fee or fee-tail at the day of his death; and that he held of the king in chief, &c. In which case the widow came into the chancery, and there made oath, that she would not marry without the king's leave; and hereupon, she had this writ to the escheator.

*Dote unde nihil habet*, a writ of dower that lies for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was seized solely in fee-simple or fee-tail, in such sort, as the issue of them both might have inherited it.

*Duces tecum*, is a writ out of chancery, commanding a person to appear at a certain day in court, and bring with him some writings, evidences, or other things, to be inspected and examined in court.

*Duress*, is where a man is kept in prison, or restrained of his liberty, contrary to the order of law, or threatened to be killed, maimed, or beaten; and if such person so in prison, or in fear of such threats, make any specialty or obligation by reason thereof, such deed is void in law: and in any action brought upon such specialty, the party may plead, that it was made by *duress*, and so he may avoid the action.

*Essoin*, signifies the allegation of an excuse for him that is summoned, or sought for; to appear and answer to an action real, or to perform suit to a court baron, upon just cause of absence. The causes that serve to *essoin* any man summoned are the following:

*Essoin de malo lecti*, is when the defendant is sick in bed.

*Essoin de malo veniendi*, is when the defendant is infirm in body, and not able to come.

*Essoin de malo villæ*, is when the defendant appears in court the first day, but departed without pleading, and being afterwards surprised by sickness, or other infirmity, cannot attend the court, but sends two *essoiners*, who openly protest in court that he is detained by sickness in such village, that he cannot come, *pro lucrari et pro perdere*; and this must be admitted for full proof, without any farther surety, for it is incumbent on the plaintiff to prove whether the *essoin* be true or not.

*Essoin per servitium regis*, is when the defendant is in the king's service.

*Essoin de ultra mare*, when the defendant is beyond sea.

*Essonio de malo lecti*, a writ directed to the sheriff, for the sending of four lawful knights to view one that had *essoined* himself, *de malo lecti*.

*Excommunicato capiendo*, a writ directed to the sheriff, for apprehending him who stands obstinately excommunicated, forty days; for such an one not seeking absolution, hath, or may have, his contempt certified into the chancery; whence issueth this writ, for imprisoning him without bail or mainprize until he conform.

*Excommunicato deliberando*, a writ to the sheriff, for the delivery of an excommunicate person out of prison, upon certificate of the ordinary, of his conformity to the jurisdiction ecclesiastical.

*Excommunicato recipiendo*, a writ whereby persons excommunicate, being for their obstinacy committed to prison, and unlawfully delivered thence, before they have given caution to obey the authority of the church, are commanded to be sought for and imprisoned again.

*Exigent*, a writ that lies where the defendant in an action personal cannot be found, nor any thing within that county, whereby he may be attached or distrained; and is directed to the sheriff, to proclaim and call him, five county court days one after another, charging him to appear on pain of outlawry; and if he come not at the last day's proclamation, he is said to be *quinquies exactus* (five times exacted) and then is outlawed.

*Ex mero motu*, words formerly used in the king's charter, to signify that he grants them of his own will and mere motion, without



petition or suggestion made by any other; and the effect of these words, are to bar all exceptions, that might be taken to the charters, &c. by alledging that the king in granting them, was abused by any false suggestions.

*Ex officio*, is so called from the power which an officer hath, by virtue of his office, to do certain acts without being particularly applied to; as, a justice of the peace may not only grant surety of the peace at the complaint or request of any person, but he may, in several instances, demand and take it *ex officio*.

*Ex parte*, of one part, as in the court of chancery, a commission *ex parte*, is that which is taken out and executed by one party only; the other party neglecting or refusing to join.

*Ex parte talis*, a writ that lies for a bailiff, or receiver, who having auditors assigned to take his account, cannot obtain of them reasonable allowance, but is cast into prison by them.

*Ex post facto*, a term in law signifying something done after another thing done, that was committed before.

*Extra-judicial*, is when judgment is given in a cause or case not depending in that court, where such judgment is given, or wherein the judge has no jurisdiction.

*Extra-parochial*, out of any parish; privileged or exempted from the duties of a parish.

*Feme covert*, a married woman, so called from being under the cover, protection, and influence, of her husband.

*Feme sole*, a single or unmarried woman; a *feme sole* is liable to perform parish offices, the act only requiring the person to be a substantial householder, without reference to sex.

*Feme sole trader*, a married woman, who, by the custom of London, trades on her own account, independent of her husband.

*Fiat*, a short order or warrant of some judge, for making out, and allowing certain processes.

*Fiat justitia*, on a petition to the king, for his warrant to bring a writ of error in parliament, he writes on the top of the petition, *fiat justitia*, and then the writ of error is made out, &c.

*Flotsam, jetsam, et lagan*. *Flotsam*, is when a ship is sunk or cast away, and the goods float on the sea; *jetsam*, is when a ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and the ship notwithstanding perisheth; and *lagan* is, when the goods so cast into the sea, are so heavy that they sink to the bottom, and therefore the mariners fasten to them a buoy or cork, or such other thing that will not sink, to enable them to find them again. The king shall have *flotsam, jetsam, et lagan*, when the ship is lost, and the owners of the goods are not known; but not otherwise: where the proprietors of the goods may be known, they have a year and a day to claim *flotsam*.

*Formedon*, a real action which lies for the issue in tail after the death of the ancestor, or for him in remainder or reversion after the estate tail determined, and is called *formedon*, because the writ comprehends the form of the gift.

*Frank almoin*, signifies a tenure or title of lands and tenements

bestowed upon God, that is given to such people as devote themselves to the service of God, for pure and perpetual alms; whence the feoffers or givers cannot demand any terrestrial service, so long as the lands, &c. remain in the hands of the feoffees.

*Frank chase*, is a liberty of free chase, whereby all men having lands within that compass, are prohibited to cut down any wood, &c. without the view of the forester, though it be in his own demesnes.

*Frank fee*, that which is in the hands of the king, or lord of any manor, being ancient demesne of the crown, is called a *frank fee*, and that which is in the hands of the tenant is ancient demesne only: whence that seems to be *frank fee*, which a man holds at the common law to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor.

*Frank ferm*, lands or tenements, wherein the nature of fee is changed by feoffment out of knight-service, for several yearly services; and whence neither homage, worship, marriage, nor relief, may be demanded, nor any other service not contained in the feoffment.

*Frank fold*, is where the lord hath the benefit of folding his tenant's sheep within his manor, for manuring his land.

*Frank law*, the benefit of the common law of the land.

*Frank marriage*, is a tenure in tail special, whereby the donees shall have the land to them and the heirs of their bodies, and shall do fealty to the donor, till the fourth degree.

*Frank pledge*, a pledge or surety for the behaviour of freemen, by a certain number of neighbours becoming bound for each other, to see each man of their pledge forthcoming at all times, to answer the transgression committed by any gone away, so that whosoever offended, it was forthwith inquired in what pledge he was, and those of that pledge either produced him within thirty-one days, or satisfied for his offence.

*Frank tenement*, a possession of freehold lands and tenements.

*Fugam fecit*, is where it is found by inquisition, that a person fled for treason, or felony; as to which it is agreed, that wheresoever a person found guilty by such inquest, either as a principal, or as an accessory before the fact, is found also to have fled for the same, he forfeits his goods absolutely, and the issues of his lands, till he be pardoned or acquitted.

*Gist of action*, is the cause for which the action lieth; the ground and foundation thereof, without which it is not maintainable.

*Habere facias seisinam*, a writ of execution directed to the sheriff, commanding him to give to the plaintiff possession of a freehold: if it be a chattel interest, and not a freehold, then the writ is entitled *habere facias possessionem*.

*Habere facias visum*, a writ that lies in divers cases in real actions, as in dower, formedon, &c. where view is required to be taken of the lands or tenements in question.

*Homine replegiando*, a writ to bail a man out of prison. When one conveys away secretly, or keeps in his custody another man



against his will; then 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 a *capias in withernam*, made by the filazer, and when he is thereupon taken, the sheriff cannot take bail for him; but the court where the writ is returnable may, if they think fit, grant an *habeas corpus* to the sheriff to bring him into court, and bail him, or else remand him. This writ is now superseded by that of *habeas corpus*.

*Hors de son fee*, an exception to avoid an action brought for rent issuing out of certain lands, by him that pretends to be the lord, or for some customs and services; for if the defendant can prove the land to be without the compass of his fee, the action fails.

*Identitate nominis*, is a writ that lies for him, who upon a *capias* or *exigent* is arrested in a 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 the 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.

*Ignoramus*, was formerly indorsed by the grand jury on the back of a bill, for which they did not find sufficient evidence; but now, since the proceedings were in English, they indorse *no bill*, or *not a true bill*, or which is the better way, *not found*.

*In autre droit*, in another's right, as where executors or administrators sue for a debt or duty, &c. of the testator or intestate.

*Indebitatus assumpsit*, 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.

*In forma pauperis*. When any man who has a just cause of suit either in chancery, or any of the courts of common law, will come before the lord keeper, master of the rolls, either of the chief justices, or chief baron, and make oath, that he is not worth 5*l.* his debts paid; either of the said judges will, in his own proper court, admit him to sue *in forma pauperis*, and he shall have counsel, clerk or attorney assigned him to do his business, without paying any fees.

*Informatus non sum*, is a formal answer made of course by an attorney who is authorized by his client to let judgment pass in that form against him. It is commonly used in warrants of attorney, given for the express purpose of confessing judgment.

*Insimul computassent*, is a writ that lies upon a stated account, between two merchants or other persons; in which case the law implies, that he against whom the balance appears hath engaged to pay it to the other, though there be not any actual promise: and from this implication it is frequent for actions on the case to be brought, declaring that the plaintiff and defendant had settled their accounts together, *insimul computassent*, and that the defendant engaged to pay to the plaintiff the balance, but hath since neglected to do it: if no account have been made up, then the legal remedy is by bringing a writ of account, *de computo*, commanding the de-

pendant to render a just account to the plaintiff, or show to the court good cause to the contrary.

*Ipsa facto*, a term used to signify the instant any thing is done, as, the church is made void for not reading the articles; adjudged, that there needs no deprivation; but it becomes *ipsa facto* void, presently by not reading the articles.

*Juris utrum*, a writ which lies for the incumbent, whose predecessor hath alienated his lands and tenements.

*Laches*, signifies slackness or negligence; as when we say, there is a *laches* of entry, it means the same as to say, there is *lack of entry*.

*Le roy le veut*, by these words the royal assent is signified by the clerk of the parliament to public bills; and to a private bill his answer is *soit fait comme il est désiré*.

*Le roy s'avisera*, by these words to a bill presented to the king by his parliament, are understood his absolute, but civil denial of that bill: and the bill thereby becomes wholly null.

*Levari facias*, a writ directed to the sheriff, for the levying a sum of money upon the lands and tenements of him that hath forfeited a recognisance.

*Levari facias damna de disseisitoribus*, a writ directed to the sheriff, for the levying of damages wherein the *disseisor*, hath formerly been condemned to the disseisee.

*Levari facias residuum debiti*, a writ directed to the sheriff, for levying the remnant of a debt upon lands and tenements, or chattels of the debtor, that hath in part satisfied before.

*Levari facias, quando vice comes returnavit quod non habuit emptores*, a writ commanding the sheriff to sell the goods of the debtor, which he hath already taken, (and returned that he could not sell them) and as much more of the debtor's goods as will satisfy the whole debt.

*Lex terræ*, the law and custom of the land, distinguished by this name from *lex civilis*.

*Mainprise*, the taking or receiving a man into friendly custody, that otherwise is or might be committed to prison, upon security given for his forthcoming at the day assigned.

*Malum in se*, an offence is said to be *malum in se*, or unlawful in itself, when it is either against the law of nature, or so far against the public good, as to be indictable at common law.

*Manu captio*, a writ that lies for a man who being taken upon suspicion of felony, and offering sufficient bail for his appearance, cannot be admitted thereto by the sheriff, or other having power to let to mainprise.

*Medietas linguæ*, a jury or inquest impanelled, whereof one half consists of natives or denizens, the other strangers; and is used in pleas, wherein the one party is a stranger, the other a denizen.

*Mesne process*, is an intermediate process, which issues pending the suit, upon some collateral interlocutory matter, as to summon juries, witnesses, and the like: sometimes it is put in contradistinction to final process, or process of execution; and then it sig-



nifies all such process as intervenes between the beginning and end of a suit.

*Mittimus*, a writ by which records are transferred from one court to another. This word is also used for the precept directed to a gaoler under the hand and seal of a justice of the peace, for the receiving and safe keeping a felon, or other offender, by him committed to gaol.

*Modus decimandi*, is when either land, a sum of money, or yearly pension is given to the person, &c. by composition or custom, as satisfaction for his tithes in kind.

*Monstrans de droit*, in a legal sense, denotes a writ issuing out of chancery, for the subject to be restored to lands and tenements, which he shows to be his right, though by office found to be in the possession of another lately dead; by which office the king is entitled to a chattel, freehold, or inheritance in the said lands.

*Moratur*, or *demoratur in lege*, whenever the counsel is of opinion, that the count or plea of the adverse party insufficient in law, then he *demurs*, or abides in law, and refers the same to the judgment of the court.

*Ne admittas*, a writ that lies for the plaintiff, in a *quare impedit*, or him who hath an action of *darrein presentment* depending in the common bench, and fears the bishop will admit the clerk of the defendant during the suit between them, which writ must be sued within six calendar months after the avoidance, because after six months, the bishop may present by lapse.

*Ne exeat regno*, is a writ to restrain a person from going out of the kingdom without the king's license.

*Nemine contradicente*, words used to signify the unanimous consent of the members of the house of commons to a vote or resolution.

*Nihil dicit*, a failing to put in answer to the plea of the plaintiff by the day assigned, which if a man omit, judgment passes against him of course by *nihil dicit*, because he says nothing in his own defence, why it should not.

*Nisi prius*, a commission directed to the judges of assize, empowering them to try all questions of fact issuing out of the courts at Westminster that are then ready for trial by jury. The original of which name is this; all causes commenced in the courts of Westminster-hall, are, by course of the courts, appointed to be tried on a day fixed in some Easter or Michaelmas term, by a jury returned from the county wherein the cause of action arises; but with this proviso, *nisi prius justiciarii ad assisas capiendas venerint*: that is, unless before the day prefixed, the judges of assize come into the county in question, which they always do in the vacation preceding each Easter and Michaelmas term, and there try the cause. 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.

*Nolle prosequi*, is sued where the plaintiff will proceed no farther

in his action, and may be as well before as after a verdict, and is 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.

*Non assumpsit*, a plea in personal actions, whereby a man denies any promise made, &c.

*Non compos mentis*, bereft of reason.

*Non est factum*, is a plea where an action is brought upon a bond or any other deed, and the defendant denies it to be his deed whereon he is impleaded. In every case where the bond is void, the defendant may plead *non est factum*; but where a bond is voidable only, he must show the special matter.

*Non obstante*, was a clause frequent in the king's letters patent, granting a thing, notwithstanding any statute or act of parliament to the contrary; which assumed power setting the prerogative above the laws, was effectually demolished by the bill of rights.

*Non omittas, propter aliquam libertatem*, 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 process himself or by his officer.

*Non pros.* If the plaintiff neglect to deliver a declaration for two terms after the defendant appears, or is guilty of other delays or defaults against the rules of law in any subsequent stage of the action, he is adjudged not to pursue his remedy as he ought; and thereupon a nonsuit or *non prosequitur*, is entered, and he is then said to be *non pros'd.*

*Nude contract*, a bare promise without any consideration, and therefore void.

*Onus probandi*, the burden of proving any thing.

*Oyer and terminer*, is a court held by virtue of the king's commission, to hear and determine all treasons, felonies, and misdemeanors. This commission is usually directed to two of the judges of the circuit, and several gentlemen of the county; but the judges only are of the quorum, so that the rest cannot act without them.

*Oyer de recordo*, is a petition made in court, that the judges for more satisfactory proof, will be pleased to hear or look upon any record.

*Parco fracto*, a writ that lies against him who violently breaks a pound, and takes out beasts, which for some trespass done, were legally impounded.

*Partes finis nihil habuerunt*, an exception taken against a fine levied.

*Per my et per tout*, a joint tenant is said to be seised of land he holds jointly *per my et per tout*, that is by every parcel and the whole.

*Placita*, pleas, or pleading, or debates and trials at law.

*Plene administravit*, 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.



*Pone.* If a replevin be sued by a writ out of chancery, then if the plaintiff or defendant will move the plaint out of the county into the common pleas or king's bench, he ought to sue a writ out of the chancery, which is called a *pone*.

*Ponendis in assisis*, a writ to show what persons sheriff's ought to empannel upon assizes and juries, and what not; as also what number.

*Pontibus reparandis*, a writ directed to the sheriff, &c. requiring him to charge one or more to repair a bridge to whom it belongeth.

*Posse comitatus*, the power of the county.

*Post diem*, a fee by way of penalty upon a sheriff for his neglect in returning a writ after the day assigned for its return.

*Post disseisin*, a writ for him that having recovered land or tenements by *præcipe quod reddat*, upon default of redition, is again disseised by the former disseisor.

*Postea*, is the return of the proceedings by nisi prius into the court of common pleas after a verdict, and there afterwards recorded.

*Post fine*, a duty to the king, for a fine formerly acknowledged before him in his court, which is paid by the cognizee, after the same is fully passed, and all things performed touching the same.

*Post nati*, children of persons attainted of treason, born after the king's pardon, may inherit lands; though not those born before.

*Pourparty*, to make *pourparty*, is to divide and sever the lands that fall to parceners.

*Pourpresture*, is where a man takes to himself or encroaches any thing that he ought not, whether it be in any jurisdiction, land or franchise; and generally when any thing is done to the nuisance of the king's tenants.

*Præcipe*, a writ commanding the defendant to do the thing required, or to show cause why he hath not done it.

*Præsentare ad ecclesiam*, denotes the patron's placing an incumbent in the church.

*Precarie*, day's work, which the tenants of some manors were bound, by reason of their tenure, to do for their lord in harvest.

*Prender de baron*, is used as an exception to deprive a woman from pursuing an appeal of murder against the killer of her former husband.

*Prest*, a duty in money, to be paid by the sheriff upon his account, in the exchequer; or for money left, or remaining in his hands.

*Primer fine*, a sum due to the king, on suing out a *præcipe* or writ of covenant, in order to the levying a fine.

*Procedendo*, a writ which lies where a cause is removed out of an inferior to a superior court.

*Procedendo ad judicium*, lies when the judges of any court delay the party, plaintiff, or defendant, and will not give judgment in a cause, when they ought to do it.

*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 to the king in chancery, and the justices in the common pleas shall stay until the writ of *procedendo de loquela* come unto them; and if it appear to the judges, by pleading or showing 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 judgment: when the justice ought not to proceed to judgment without a writ for that purpose.

*Prochein amy*, is the next of kin to a child in his nonage, and is in that respect allowed by law to conduct and manage his affairs.

*Pro confesso*, where a bill is exhibited in chancery, to which the defendant appears, and is afterwards in contempt for not answering, or makes an insufficient answer, the matter contained in the bill shall be taken as if it were confessed by the defendant.

*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*, (producing it in court) to the end that the other party may at his own charges have a copy of it; and until then he hath at his request and charges gotten a copy of the deed, he is not bound to answer it.

*Pro indiviso*. The possession or occupation of lands or tenements, belonging to two or more persons, whereof none knows his several portion; as *coparceners* before partition.

*Proviso*, is a condition inserted into a deed, upon the observance whereof the validity of the deed depends.

*Puis darrien continuance*, a plea of new matter pending an action.

*Puisne*, younger, junior.

*Pur auter vie*, where lands, &c. are held by another's life.

*Quæ plura*, a writ which lay where an inquisition had been taken by an escheator in any county, of such lands or tenements as any man died seised of, and all that was in his possession was imagined not to be found by the office.

*Quærens non invenit plegium*, a return made by the sheriff upon a writ directed to him.

*Quæstus*, is that which a man hath by purchase, as *hæreditas* is what he hath by descent.

*Quale jus*, a writ judicial, which lay where a man of religion had judgment to recover land; before execution was made of the judgment, it went to the escheator, between judgment and execution, to inquire whether the religious person had any right to recover, or whether the judgment was obtained by collusion between the parties, to the intent that the true lord might not be defrauded.

*Quamdiu se bene gesserit*, as long as he shall behave himself well in his office, is a clause frequently inserted in letters patent.

*Quantum meruit*, is an action upon the case, grounded upon the promise of another, to pay him for doing any thing, so much as he should deserve or merit.

*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 *quandum valebat* lies, and the plaintiff is to aver them to be worth so much.

*Quare impedit*, a writ which lies for him that hath purchased a manor, with the advowson thereto belonging, against him that disturbs him in the right of his advowson, by presenting a clerk thereto when the church is void.

*Quare incumbravit*, is a writ that lies where two are in plea for the advowson of a church, and the bishop admits the clerk of one of them within six months after vacation of a benefice; then the other shall have this writ against the bishop, that he appear and show cause why he hath encumbered the church. And if it be found by verdict that the bishop hath encumbered the church after a *ne admittas* delivered to him, and within six months after the avoidance, damages are to be awarded to the plaintiff, and the bishop directed to disencumber the church.

*Quare non admisit*, a writ that lies against a bishop refusing to admit his clerk, that hath recovered in a plea of advowson.

*Quare non permittit*, a writ that lies for one who has right to prevent for a turn against the proprietary.

*Que estate*. In common law it is a plea, whereby a man entitling another to land, &c. saith that the same estate he had, he hath from him.

*Quem redditum reddat*. A judicial writ that lies for him to whom a rent charge is granted, by fine levied in the king's court against the tenant of the land, who refuses to attorn to him, thereby to cause to attorn.

*Querela*, an action in a court of justice.

*Quid juris clamat*, a judicial writ issuing out of the record of the fine, which remains with the *custos brevium* of the common pleas, before it is engrossed; and it lies for a grantee of the reversion or remainder, when the particular tenant will not attorn.

*Quid pro quo*, the giving one thing of value, for another thing of like value, being the mutual consideration and performance of both parties in the contract.

*Quietus*, a word used by the clerk of the pipe, and auditors of the exchequer, in their acquittances or discharges given to accountants.

*Quietus redditus*, a quit rent, or small acknowledgment paid in money, so called, because such payment acquitted the tenant from all other services or duties to the lord.

*Quinto exactus*, the fifth and last call of a defendant, who issued to the outlawry; where, if he appear not, he is by the judgment of the coroners returned outlawed.

*Qui tam actions*, are popular actions, so called from the words which are used in the process, viz. *qui tam pro domino rege sequitur, quam pro se-ipso*, i. e. who sues as well for our lord the king as for himself.

*Quod ei deforceat*, a writ that lies for the tenant in tail, tenant in

dower, or tenant for term of life, having lost their lands by default, against him that recovered, or against his heir.

*Quod permittat*, a writ that lies for one who is disseised of his common of pasture, against the heir of the disseisor.

*Quo jure*, a writ that lies for him who has land wherein another challenges common of pasture time out of mind, and is to compel him to show by what title he challenges it.

*Quo minus*, a writ that lies for him that hath a grant of housebote and haybote, in another man's woods, against the grantor, making such waste as the grantee cannot enjoy his grant.

*Quorum*, a word which often occurs in our statutes, and is much used in commissions both of justices of the peace, and others, and so called from the words of the commission, *quorum unum esse volumus*.

*Quo warranto*, is in nature of a writ of right for the king, against him who claims or usurps any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right.

*Rebutter*, is the answer of the defendant to the plaintiff's surrejoinder.

*Recordare*, or *recordari facias*, a writ directed to the sheriff, to remove a cause depending in an inferior court, or court of ancient demesne, hundred, or county, to the king's bench or common pleas.

*Recoupe*, signifies the keeping back or stopping something, for what is due; thus an innkeeper may keep back or detain his guests, horses, &c. till he pay for his entertainment.

*Recto de advocacione ecclesie*, a writ of right, lying where a man hath a right of advowson, and the parson of the church dying, a stranger presents his clerk to the church, and he not having brought his action of *quare impedit*, nor *darrein presentment*, within six months, but suffered the stranger to usurp upon him.

*Recto de custodia terre et heredis*, a writ that lay for him, whose tenant holding of him in chivalry, died in nonage, against a stranger that entered upon the land and took the body of the heir.

*Recto de dote*, a writ of right of dower, which lies for a woman who hath received part of her dower, and purposes to demand the remainder in the same town, against the heir, or his guardian, if he be a ward.

*Recto de dote unde nihil habet*, a writ of right which lies in a case where the husband, having divers lands or tenements, hath assured no dower to his wife, and she thereby is driven to sue for her thirds, against the heir or his guardian.

*Recto quando dominus remisit*, a writ of right which lies in case where lands or tenements in the seigniorship of any lord are in demand by a writ of right.

*Recto sur disclaimer*, a writ that lies where a lord in the king's court of common pleas avows upon his tenant, and the tenant disclaims to hold of him; upon which disclaimer he shall have this



writ; and if the lord aver and prove that the land is holden of him, he shall recover the land for ever.

*Recusant*, a person who refuses to go to church, and worship God, after the manner of the church of England as by law established: to which is annexed the penalty of 20*l.* a month for non-conformity.

*Reddendum*, a clause in a lease whereby the rent is reserved to the lessor.

*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.

*Regio assensu*, a writ whereby the king gives his royal assent to the election of a bishop.

*Rejoinder*, is where the defendant answers 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; otherwise it is a departure from the plea, which the law will not allow.

*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.

*Scilicet*, that is to say, or to wit, and is frequently used in law proceedings.

*Scire facias*, is a judicial writ, and properly lies after a year and a day after judgment given; whereby the sheriff is commanded to summon or give notice to the defendant, that he appear and show cause why the plaintiff should not have execution.

*Scutagio habendo*, a writ which lay for the king, or other lord, against the tenant that held by knight's service, to serve by himself, or else to send a sufficient man in his place, or pay, &c.

*Scyrgemote*, a court held twice every year, as the sheriff's torn is now, by the bishop of the diocese, and the ealderman (in shires that had ealdermen), and by the bishops and sheriffs, in such as were committed to the sheriffs that were immediate to the king, wherein both the ecclesiastical and temporal laws were given in charge to the country.

*Secta ad curiam*, a writ that lies against him who refuses to perform his suit, either to the county, or court baron.

*Secta ad justiciam faciendam*, a service which a man is bound to perform by his fee.

*Secta curia*, suit and service done by tenants at the court of their lord.

*Secta regalis*, a suit so called, by which all persons were bound twice in a year to attend the sheriff's torn, that they might be informed of things relating to the peace of the public: it was called *regalis*, because the sheriff's torn was the king's leet; and it was a court held that the people might be bound by oath to bear true allegiance to the king: for all persons above twelve years old were obliged to take the oath of allegiance in this court.

*Secta unica tantum facienda pro pluribus hæreditatibus*, a writ that

lies for that heir that is distrained by the lord to more suits than one, in respect of the land of divers heirs descended unto him.

*Sectis non faciendis*, a writ that lies for a woman, who for her dower ought not to perform suit or court.

*Securitate pacis*, a writ that lies for one who is threatened with death or danger, against him that so threateneth, and is taken out of the chancery, and directed to the sheriff.

*Se defendendo*, a plea for him who is charged with the death of another, saying he was compelled to do that which he did, in his own defence.

*Seisin*, is twofold, seisin in law, and seisin in fact. Seisin in fact, is when an actual possession is taken; seisin in law when something is done, which the law accounts a seisin, as an inrolment.

*Seisina habenda, quia rex habuit annum, diem, et vastum*, a writ which lies for delivery of seisin to the lord of his lands or tenements, after the king, in the right of his prerogative, hath had the year, day and waste.

*Sequator sub suo periculo*, a writ that lies where a summons *ad warrantisandum* is awarded, and the sheriff returns that he hath nothing whereby he may be summoned; then issues an *alias*, and *pluries*, and if he come not at the *pluries*, this writ shall issue.

*Sequela causæ*, the process, and depending issue of a cause or trial.

*Sequela curiæ*, a suit of court.

*Sequela villanorum*, all the retinue and appurtenances to the goods and chattels of servile tenants, which were at the arbitrary and absolute disposal of the lord.

*Sequestro habendo*, a writ judicial, for dissolving a sequestration of the fruits of a benefice made by a bishop at the king's command, thereby to compel the parson to appear at the suit of another; for the parson upon his appearance may have this writ for the discharge of the sequestration.

*Servitium feudale, et prædiale*, was not a personal service, but only by reason of the lands which were held in fee.

*Servitium forinsecum*, a service which did not belong to the chief lord, but to the king.

*Servitium intrinsecum*, is that service which was due to the chief lord alone, from his vassals.

*Servitium liberum*, a service to be done by the feudatory tenants, who were called *liberi homines*, and distinct from vassals; so also was their service, for they were not bound to any of those base services, as to plough the lord's land, &c. but only to find a man and horse to go with the lord into the army, or to attend his court, &c.

*Servitium regale*, royal service, or the rights and prerogatives that within such a manor belong to the lord of it, as were formerly annexed to some manors in their grant from the king.

*Sicut alias*, a second writ issued, where the first was not executed.

*Significavit*, a writ *de excommunicate capiendo*, issuing out of chancery upon a certificate given by the ordinary, of a man that stands obstinately excommunicated, by the space of forty days, for



the laying him up in prison, without bail or mainprise, until he submit himself to the authority of the church. And it is so called, because the word *significavit*, is an emphatical word in the writ.

*Super institution*, one institution upon another; as where *A.* is admitted and instituted to a benefice upon one title, and *B.* is admitted, instituted, &c. by the presentment of another.

*Super jurare*, when a criminal endeavoured to excuse himself by his own oath, or by the oath of one or two witnesses, and the crime was so notorious, that he was convicted by the oaths of *many more* witnesses, this was called *super jurare*.

*Super prærogativa regis*, a writ which anciently lay against the king's widow, for marrying without his license.

*Super statuto de articulo cleri*, a writ lying against the sheriff or other officer, who distrains in the king's highway, or in the glebe land anciently given to rectories.

*Sur-rejoinder*, as a rejoinder is the defendant's answer to the replication of the plaintiff; so a sur-rejoinder is the plaintiff's answer to the defendant's rejoinder.

*Tallagium facere*, to give up accounts in the exchequer, where the method of accounting is by tallies.

*Taxatio bladorum*, a tax or imposition laid upon corn.

*Terra affirmata*, land let to farm.

*Triours*, or *triers*, are such as are chosen by the court to examine whether a challenge made to the panel, or any of the panel, be just or no.

*Turno vicecomitum*, a writ that lies for those who are called to the sheriff's turn out of their own hundred.

*Vadium ponere*, to take security, bail, or pledges for the appearance of a delinquent in a court of justice.

*Vectigal judiciarum*, is applied to money or fines paid to the king, for the support of the courts of justice, and the protection of the people.

*Venditor regis*, the king's salesman; being the person who exposed to sale those goods and chattels which were seized and distrained to answer any debt due to the king.

*Vicario deliverando occasione cujusdam recognitionis*, &c. A writ which lies for a spiritual person imprisoned, upon forfeiture of a recognisance without the king's writ.

*User de action*, the pursuing or bringing an action in a proper county.

*Warrantia diei*, a writ lying in case where a man having a day assigned personally to appear in court to any action wherein he is sued, is in the mean time employed in the king's service, so that he cannot come at the day assigned. This writ is directed to the justices to this end, that they neither take nor record him in default for that day.

## NEW INSOLVENT ACT.

*An Abstract of an Act for the Relief of Insolvent Debtors in England; to continue in force until the first Day of June, one thousand eight hundred and twenty-five. [Passed July 26, 1820.]*

*Three Barristers to be appointed Commissioners.—Court to be a Court of Record.—Appointment of Officers.—Power of the Court.—Court not to award Costs but in certain Cases.—Witnesses shall not be compelled to attend unless Expenses are previously tendered.*

**T**HAT from and after the passing of this act, it shall be lawful for his majesty to appoint a chief and two other commissioners, being barristers at law of ten years standing at the least, to be his majesty's commissioners for the relief of insolvent debtors, and to preside in a court to be called The Court for Relief of Insolvent Debtors; which shall be a court of record for the purposes of this act; and that when and as soon as the said respective appointments shall have been notified in the London Gazette, such court shall be deemed to be fully constituted and established; and that such court shall have power to appoint a chief clerk, a provisional assignee, a receiver, and such other officers as the lord chancellor, and the chief justices of the courts of king's bench and common pleas, and the lord chief baron of the exchequer, shall judge to be necessary, and in such manner as they shall direct; and that the said court, or any of the commissioners acting under the powers of this act, may adjourn any meeting under this act as often as the said court or commissioners shall think necessary, and may administer oaths, and examine all parties and witnesses upon oath, for the purposes of this act, and shall have such like and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and writings, as now are possessed by any of the superior courts at Westminster, and to order any prisoner who shall have petitioned for relief under this act, or any prisoner who shall be a necessary and material witness in any matter pending in the said court, or before any commissioner thereof, to be brought before the said court, or such commissioner, as often as the said court or commissioner shall think fit; and that the said court shall also have the power of committing all persons guilty of any contempt to the said court to the prison of the king's bench, or to the common gaol of any county in which



such persons shall be, and the power of fining in a summary way, or removing any of the officers of the said court who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever: provided always, that the said court shall not have the power of awarding costs against any person or persons whomsoever, except in such cases only where such costs are hereinafter expressly mentioned and permitted to be awarded by this act: that nothing herein contained shall extend to the compelling the attendance of any witness, unless the party on whose behalf such witness shall be required to attend shall have previously tendered to such witness such allowance for expenses for his attendance as in the judgment of the said court, or of a commissioner, shall appear to be reasonable.

*Sitting of the Court Twice a Week.*

II. That the said court shall sit for the dispatch of business twice in every week throughout the year, and one, at least, of the said commissioners shall attend for such purpose.

*No Fees to be taken except such as shall be established.*

III. That no fee or gratuity shall be received or taken by the said court, or any officer thereof, of or from any person whomsoever, on any pretence whatsoever, except such as shall at any time be specified in a list thereof, to be signed by the commissioners of the said court, a copy of which list shall always be exposed to view in the office of the said court.

*Persons in Custody for Debt, &c. may apply by Petition in a summary way for Discharge.—Petition to state Debts and other particulars.—Petition to be filed.—Prisoner to make an Assignment of his Estate, &c. except Wearing Apparel, &c. not exceeding the value of 20l.*

IV. That when and as soon as the said court shall be fully constituted and established, it shall be lawful for any person, in that part of the united kingdom called England, who shall be in actual custody upon any process whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or for or by reason of any contempt of any court whatsoever for non-payment of any sum or sums of money, or of costs, taxed or untaxed, either ordered to be paid, or to the payment of which such persons would be liable in purging such contempt, or in any manner in consequence of or by reason of such contempt, at any time within the space of fourteen days next after such court shall have been fully constituted, or within the space of fourteen days next after the commencement of such actual custody, or within such further time as the said court shall think reasonable, to apply by petition, in a summary way, to the court for his or her discharge from such confinement; and in such petition shall be stated the place wherein such prisoner shall be then confined, the time when such prisoner was first charged in custody, together with the name or names of the person or persons at whose suit or prosecution he or she shall, at the time of present-

ing such petition, be detained in custody, and the amount of the debts and sums of money, and also of such costs as aforesaid, so far as the amount of such costs is ascertained, for which such prisoner shall be so detained, and shall pray to be discharged from custody, and to have future liberty of his or her person against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be, or claim to be, creditors of such prisoner at the time of presenting such petition; which petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said court; and such prisoner shall, at the time of subscribing such petition, duly execute a conveyance and assignment, in such manner and form as the said court shall direct, of all the estate, right, title, interest, and trust of such prisoner, to all the real and personal estate and effects of every such prisoner, except to the wearing apparel, bedding, and other such necessaries of such prisoner, and his or her family, not exceeding in the whole the value of twenty pounds, so as to vest all such real and personal estate and effects in the provisional assignee of the said court, subject to a proviso, that in case such prisoner shall not obtain his discharge by virtue of this act, such conveyance and assignment shall, from after the dismissal of the petition of such prisoner praying for his discharge, be null and void to all intents and purposes.

*Court may order an Allowance for Support of Prisoner during Confinement.*

V. That the said court shall and may order and direct such provisional assignee, or such assignee or assignees as are herein-after mentioned, to pay out of the said estate and effects before mentioned, to the said prisoner, such allowance for his or her support and maintenance, during such prisoner's confinement in actual custody, as to the said court shall seem reasonable and fit.

*When Petition is filed, Prisoner to deliver in a Schedule of Debts, Property, &c.*

VI. That such prisoner shall, within the space of fourteen days next after such petition shall have been filed, or within such further time as the said court shall think reasonable, deliver into the said court a schedule, containing a full and true description of all and every person and persons to whom such prisoner shall be then indebted, or who, to his or her knowledge or belief, shall claim to be his or her creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner; and also a full, true, and perfect account of all the estates and effects, real and personal, in possession, reversion, remainder, or expectancy; and also of all places of benefit or advantage, whether the emoluments of the same arise from fixed salaries or from fees; and also of all pensions or allowances of the said prisoner in possession or reversion, or held by any other person or persons for or on behalf



of the said prisoner, or of and from which the said prisoner derives, or may derive, any manner of benefit or advantage; and also all rights and powers, of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his or her use, benefit, or advantage, in any manner whatsoever, shall be seised or possessed of, or interested in, or entitled unto, or which such prisoner, or any person or persons in trust for him or her, or for his or her benefit, shall have any power to dispose of, charge, or exercise for the benefit or advantage of such prisoner at the time of presenting such petition; together with a full, true, and perfect account of all debts at such time owing to such prisoner, or to any person or persons in trust for him or her, or for his or her benefit or advantage, either solely, or jointly with any other person or persons; and the names and places of abode of the several persons from whom such debts shall be due or owing, and of the witnesses who can prove such debts, so far as such prisoner can set forth the same; and such schedule shall also fully and truly describe the wearing apparel and bedding of such prisoner, her family, and the working tools and implements, and other such necessaries, not exceeding in the whole the sum of twenty pounds, which may be excepted by such prisoner from the operation of this act, together with the values of such excepted articles respectively; and the said schedule shall be subscribed by such prisoner, and shall forthwith be filed in the said court.

*Court may appoint Assignees.—Their Acceptance to be signified to the Court.—Copyhold or Customary Estates to be assigned.—Sale of Estate and Effects of the Prisoner to be immediately made.—Creditors to meet Thirty Days before Sale.—At the end of Three Months Dividends to be made.—Notice of which shall be given.—Debt to be proved.*

VII. That when the said court shall adjudge any prisoner to be entitled to his discharge, such court shall appoint a proper person or persons to be assignee or assignees of the estate and effects of such prisoner for the purposes of this act; and when such assignee or assignees shall have signified to the said court their acceptance of the said appointment, every such prisoner's estate, effects, rights, and powers, vested in such provisional assignee as aforesaid, shall immediately be assigned by such provisional assignee to such assignee or assignees, in trust for the benefit of such assignee or assignees and the rest of the creditors of every such prisoner, in respect of or in proportion to their respective debts, according to the provisions of this act; and in case any prisoner who shall be discharged by virtue of this act shall be entitled to any copyhold or customary estate, the assignment to such an assignee or assignees as aforesaid shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for the assignee or assignees of the estate and effects of such prisoner to surrender or convey such

copyhold or customary estate to any purchaser or purchasers of any such copyhold or customary estate from such assignee or assignees, as the said court shall direct, and the rents and profits thereof shall be in the mean time received by such assignee or assignees, for the benefit of the creditors of such prisoner, without prejudice, nevertheless, to the lord or lords of the manor of which any such copyhold or customary estate shall be holden; and such assignee or assignees are hereby fully empowered to sue from time to time, as there may be occasion, in his, her, or their own name or names, for the recovery, obtaining, and enforcing any estate, effects, or rights of any such prisoner; and also to execute any trust or power vested in or created for the use or benefit of any such prisoner, but in trust for the benefit of such assignee or assignees and the rest of the creditors of every such prisoner, and to give such discharge and discharges to any person or persons who shall respectively be indebted to such prisoner as may be requisite; and every such assignment, whether to a provisional or other assignee or assignees, shall be entered on the proceedings of the said court, and an office copy of every such assignment shall be sufficient evidence thereof in all courts, and to all intents and purposes; and every such assignee or assignees shall, with all convenient speed, after his, her, or their accepting such assignment as aforesaid, use his, or her, or their best endeavours to receive and get in the estate and effects of every such prisoner; and shall, with all convenient speed, make sale of all the estate and effects of such prisoner vested in such assignee or assignees; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, the same, within the space of two months after such assignment or conveyance, or within such other time as the said court shall direct, shall be sold by public auction, in such manner, and at such place or places, as the major part of the creditors of such prisoner entitled to the benefit thereof, who shall assemble together on any notice in writing published in the London Gazette, and in some daily paper printed and published in London, or within the bills of mortality, if the prisoner, before his or her going to prison, resided in London, or within the bills of mortality; and if such prisoner resided elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the county, riding, division, city, town, liberty, or place in which such prisoner resided before he or she was committed to prison, thirty days before any such sale shall be made, shall, under his, her, or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of his, her, or their accepting any such assignment or conveyance as aforesaid, and so from time to time, as occasion shall require, shall make up an account of such prisoner's estate, and make oath in writing, before an officer of the said court, to be appointed for that purpose, or before one or more justice or justices of the peace of the county, riding, division, city, town, liberty, or place in which such assignee or assignees shall



reside, that such account contains a fair and just account of the estate and effects of every such prisoner got in by or for such assignee or assignees, and of all payments made in respect thereof, and that all payments in every such account charged were truly and *bona fide* made and paid; which account, so sworn, shall be filed with the proper officer of the said court; and if it shall appear that such assignee or assignees has in his or their hands any balance wherewith a dividend may be made amongst the creditors of such prisoner, whose debts are expressed in the schedule delivered by such prisoner, such assignee or assignees shall forthwith declare the amount of the balance in his or their hands wherewith such dividend may be made; and notice of the making of every such dividend shall be published, in like manner, at a meeting of creditors as herein-before directed to be published, thirty days at least before such dividend shall be made; and every creditor whose debts shall be stated admitted in the prisoner's schedule shall be allowed to receive a share of such dividend, unless such prisoner, or his or her assignee or assignees, or any other creditor of such prisoner, shall object to any such debt; in which case the same shall be examined into by the said court, who shall have full power, for that purpose, to require and compel the production of all books, papers, and writings which may be necessary to be produced, as well by the person or persons claiming such debt, as by the prisoner against whom the same shall be claimed, or his or her assignee or assignees, and to examine all such persons and their witnesses on oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such claim; and the decision of the said court upon such claim shall be conclusive with respect to any dividend of the effects of such prisoner under the provisions of this act.

*Court to give Directions as to the Disposal of Property in the Cases herein mentioned.—Property may be mortgaged if more beneficial.*

VIII. Prisoners discharged by virtue of this act may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof, for payment of their debts, may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage for payment of the debts, or part of the debts, of a prisoner discharged by virtue of this act, and defraying the expenses attending the execution of this act, instead of selling the property of such prisoner for such purposes, it is enacted, That in all such cases it shall be lawful for the said court to take into consideration all circumstances affecting the property of any prisoner who shall be discharged by virtue of this act, either at the time of the discharge of such prisoner, or at any subsequent time; and if it shall appear to the said court that it would be reasonable to make any special order touching the

same, it shall be lawful for the said court so to do, and to direct that such property as it may be expedient not to sell, or not to sell immediately, according to the provisions of this act, shall not be so sold, and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such prisoner until the same can be properly sold, or until payment of all such creditors, according to the provisions of this act, and to make such order touching the sale or disposition of such property as to the said court shall seem reasonable, considering the rights of the creditors of such prisoner to payment of their demands, and the future benefit of such prisoner after payment of his or her debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just; and if it shall appear to the said court that the debts of such prisoner can be discharged by means of money raised by way of mortgage on any property of such prisoner, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such prisoner, in such manner as may be most consistent with the interests of such prisoner in any surplus of his or her effects after payment of such debts.

*In case Prisoner shall be dissatisfied with the Assignee's Account, or if they neglect to do their Duty, Court may direct Inquiry.— Books to be produced.*

IX. That in case such prisoner, or any of his or her creditors, or the said court, shall at any time be dissatisfied with the account of any assignee or assignees, so rendered upon oath, or in case any such assignee or assignees shall neglect to render such account, or shall neglect to dispose of the property, or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner, or neglect to make a due distribution thereof, it shall be lawful for such court, or to any such creditor as aforesaid, to require such assignee or assignees to render such account on oath, as is directed by this act, if not before rendered, and to examine any account so rendered, and to inquire into any waste, mismanagement, or neglect of the estate or effects of such prisoner, and direct a proper administration thereof, and ascertain the produce of such estate and effects to be divided amongst the creditors of such prisoner, and direct the distribution thereof accordingly; and to require and compel the production of all books, papers, and writings necessary for such purposes, and to examine all parties, and their writings, on oath, as the case may require; and to take all such measures as shall be necessary for the compelling and rendering of such account, and the due investigation thereof, and the proper disposition and distribution of the effects of such prisoner, according to this act, and to award costs against any of the parties, as justice shall require: and the deci-



sions of the said court upon all such matters shall be final and conclusive.

*Creditor for Annuity may receive Dividend, &c.*

X. That every creditor of any prisoner for any sum or sums of money payable by way of annuity, or otherwise, at any future time, by virtue of any bond, covenant, or other securities, of any nature whatsoever, may be and shall be entitled to be admitted a creditor, and shall be entitled to receive a dividend or dividend of the estate of such prisoner, in such manner, and upon such terms and conditions as such creditor or creditors would have been entitled unto by the laws now in force if such prisoner had become bankrupt; the amount upon which such dividend shall be calculated, and the terms and conditions on which the same shall be received, being first settled by the said court, and without prejudice in future to their respective securities, otherwise than as the same would have been affected by a proof made in respect thereof by a creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission.

*Suit not to be commenced without Consent of Majority of Creditors.*

XI. That no suit in law be proceeded in further than an arrest on mesne process, or suit in equity be commenced by any assignee or assignees of any such prisoner's estate and effects without the consent of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice to be given, at least fourteen days before such meeting, in the London Gazette, or other newspaper which shall be published in the neighbourhood of the last residence of such prisoner, for that purpose, and without the approbation of one of the commissioners of the said court.

*Where Persons claiming the Benefit of Act are seised of Lands, and have Power to lease, like Power extended to Assignees.*

XII. And whereas many persons who may claim the benefit, or be brought within the operation of this act, are seised and possessed of lands, tenements, and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or have powers over such real or personal estate which such prisoner could execute for their own advantage, and which said powers ought to be executed for the benefit of the creditors of such prisoners; it is enacted, that in every such case the powers of leasing such lands, tenements, and hereditaments, and all other powers as aforesaid over such real or personal estates, which are or shall be vested in any such prisoner as are hereby vested in the assignee or assignees of the real and personal estate of such prisoner, so far as the prisoner could by law vest such power in any person to whom he might lawfully have conveyed such property, to be by such assignee or assignees executed for the benefit of all the creditors of such prisoner.

*Assignees, after giving Notice in Gazette, &c. may make Composition for Debts owing to Prisoner.*

XIII. That it shall be lawful at all times hereafter for any assignee or assignees of the estate or effects of any prisoner, by the consent of the major part in value of the creditors of such prisoner, who shall be present at a meeting to be had on fourteen days notice previously given for the purpose hereafter mentioned in the London Gazette, if the prisoner was in custody in London, or within the weekly bills of mortality, and if not, then also in some newspaper which shall be published in the county, city, or place in or near which such prisoner shall have been in such actual custody, and with the approbation of one of the commissioners of the said court, to make compositions with any debtors or accountants to such prisoner, where the same shall appear necessary or reasonable, and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts; and to submit to arbitration any difference or dispute between such assignee or assignees, and any person or persons on account of any matter, cause, or thing relating to the estate and effects of such prisoner; and every such assignee or assignees are hereby indemnified for what they shall fairly do in the premises in pursuance of this act.

*Court may appoint new Assignees in case of Death or Removal.*

XIV. That in case any assignee so appointed shall be unwilling to act, or in case of the death, or incapacity, or misconduct of any assignee, it shall be lawful for any creditor of such prisoner to apply to the said court to appoint a new assignee or assignees; and the said court shall have power to remove such assignees, and to appoint such new assignee or assignees, and to oblige any assignee who shall be removed, and the heirs, executors, administrators, and assignees of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto as shall remain in his or her hands, to be applied for the purposes of this act; and the decision of the said court thereupon shall be final and exclusive; and immediately after such appointment, all the estate, effects, rights, and powers of the said prisoner, vested either in the provisional assignee, or such assignee or assignees, shall become vested in such new assignee or assignees.

*When Assignees shall not deliver over Balance of Property, Court may order them to be arrested, &c.*

XV. That in case any such assignee or assignees, or the heirs, executors, or administrators of any deceased assignee or assignees, shall not deliver over any part of such estate or effects, or pay the balance of the produce of any such estate or effects found to be in the hands of such assignee or assignees, or of such heirs, executors, or administrators as aforesaid, according to the tenor of this act, it shall be lawful for the court to be established by virtue of this act



to order the person or persons so offending, to be arrested and committed to the county gaol nearest to the place where they shall reside; there to remain without bail or mainprize, until such person or persons shall have fulfilled the duty required by the act, or until this court shall make other order to the contrary.

*Court to give Notice in the London Gazette, &c. to Creditors after Petition and Schedule shall have been filed.—Creditors may oppose Prisoner's Discharge, &c.—Accounts of Prisoner may be referred to an Officer of the Court—If Court satisfied with Schedule, Prisoner to be discharged forthwith, or so soon as he shall have been in Custody Six Months.*

XVI. That the said court shall forthwith, after such petition and schedule shall have been respectively filed in the said court, cause notice thereof to be given to the creditor or creditors, at whose suit such prisoner shall be detained, or the attorney or agent of such creditor or creditors, and to the other creditors named in the schedule of such prisoner, or such of them as the said court shall think fit, and to be inserted in the London Gazette, and also, if the said court shall think necessary, in some other newspaper or newspapers, and shall appoint a day and place for the hearing of the matter of such petition; and in case such notice as the said court shall direct shall have been given by any creditor, of his or her intention to oppose such prisoner's discharge, it shall and may be lawful both for the said creditor, and any other of the creditors of the said prisoner, to oppose such prisoner's discharge, and for that purpose to put such questions to such prisoner and examine such witnesses as the said court shall think fit, touching the matters contained in such petition and schedule, and touching such other matters as the said court shall be of opinion that it may be fit and proper to inquire into, in order to the due execution of this act; but no creditor shall examine or oppose the discharge of such prisoner, until he shall make oath or affidavit of his debt, or otherwise satisfy the court of his right to oppose such prisoner's discharge, if required so to do by such prisoner: provided that at such hearing, any creditor or creditors so opposing may require, or the court may, if it shall deem it necessary, order that it shall be referred to an officer of the said court, to investigate the accounts of the said prisoner, and to examine into the truth of the schedule of such prisoner, and to report to the said court; and the said court may at such hearing proceed on the other matters in opposition to discharge of such prisoner, or adjourn the said hearing thereof until such officer have made his report; and in case such prisoner shall not be opposed, and the court shall be satisfied with the said schedule, and that such prisoner is entitled to the benefit of this act, then and in such case such court shall so declare, and shall order such prisoner to be discharged from custody forthwith, or so soon as such prisoner shall have been in custody at the suit of one or more of the persons who were creditors at the time of petitioning, or who have since become creditors in respect of debts then growing due, for such period or periods not exceeding

six months in the whole, as the said court shall direct to be computed from the time of filing the petition of such prisoner, and shall in such order specify the several debts of the said prisoner to which such charge shall apply; and such discharge shall extend to all process issuing from any court for contempt of any court, ecclesiastical or civil, by non-payment of money, or of costs or expenses in any cause or proceeding in any court, ecclesiastical or civil; and in case it shall appear to such court that the opposition to the petition of such prisoner, by any of such creditors, is frivolous and vexatious, that then it shall and may be lawful for such court to award such costs to such prisoner as appear unto the court to be just and reasonable.

*When it shall appear to the Court that such Prisoner shall have destroyed Books or acted fraudulently, &c. Term of Imprisonment may be extended to Three Years.*

XVII. That in case it shall appear to the said court, that such prisoner shall, with intent to conceal the state of his affairs, or to defeat the objects of this act, have destroyed or otherwise wilfully prevented or purposely withheld the production of any books, papers, or writings, relating to such of his affairs as are subject to investigation under this act; or shall have kept or caused to be kept, false books, or made false entries, or have wilfully and fraudulently altered or falsified any such books, papers, or writings; or shall in any respect have been guilty of fraud, in discharging or concealing any debt due to or from the said prisoner: or shall have fraudulently made away with, charged, mortgaged, or concealed any part of his or her property, of what kind soever, either before or after the commencement of his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of his said creditors; then it shall and may be lawful for the said court to order that such prisoner shall not be discharged out of custody by virtue of this act, or receive or be entitled to any protection under the same, until he shall have been in custody at the suit of some one or more of the persons who were creditors at the time of his petitioning the said court, or had since become creditors in respect of debts then growing due, and from whose claims he shall be discharged by the judgment of the said court, for such period or periods, not exceeding three years in the whole, as the said court shall direct, to be computed from the filing of such prisoner's petition to the said court.

*When Prisoner shall have contracted Debts fraudulently, &c. or put their Creditors to any unnecessary Expense, the Court may extend Time of Imprisonment to Two Years.*

XVIII. That in case it shall appear to the court that any such prisoner shall have contracted any of his debts fraudulently, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same, or shall be indebted for damages recovered in any action for criminal conversation, or for seducing the daughter of the plaintiff



in such action, or in any action for a malicious prosecution for any other malicious injury, or shall have put any of his or her creditors to any unnecessary expense, by any vexatious or frivolous defence to any suit for recovering the same, it shall be lawful for such court to order that such prisoner shall not be discharged by virtue of this act, or be entitled to any benefit or protection under the same, until he shall have been in custody at the suit of the creditor or creditors where debts shall have been so contracted or damages so incurred, or who shall have been so put to expense, for such period or periods, not exceeding two years in the whole, as the court shall direct, to be computed as aforesaid.

*Court may order Creditors to pay Prisoners any Sum not exceeding 4s. a Week.*

XIX. That in all cases where such prisoner shall not be ordered to be discharged but to be liable to imprisonment at the suit of his creditor or creditors, or of any of them, it shall be lawful for the court, on the application of such prisoner, to order the creditor or creditors at whose suit such prisoner shall be imprisoned, to pay to such prisoner such sum or sums of money, not exceeding the rate of 4s. by the week in the whole, at such times and in such manner as the said court shall direct; and that on failure of payment thereof as directed by the said court, such prisoner shall be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

*Justices of the Peace to appoint in their Districts Examiners, &c.*

XX. That the justices of the peace for every county, riding, city, cinque port, ancient town or members, division, liberty, or place, assembled at the general quarter sessions of the peace, or at any adjournment thereof, and from time to time afterwards as occasion may require, shall and may in open court appoint as many fit persons as they shall judge sufficient to be examiners for the purposes of this act, within their respective jurisdiction.

*The Court may direct final Examinations to be taken at Quarter Sessions.—Notice to be given in the London Gazette, &c.—Prisoner's Discharge may be opposed.—Schedule may be further investigated.—Examiner to receive 1l. for every Meeting.*

XXI. That the court established by virtue of this act shall and may in all cases, as they shall think fit, order and direct that any prisoner, instead of being brought before such court for final examination, shall be examined by the justices of the peace in open court at their general or quarter sessions of the peace, or some adjournment thereof, for any county, riding, city, &c. who are hereby empowered and required to take such examination pursuant to such order; and the said court shall cause twenty-one days' notice to be given in the London Gazette, and in one or more newspapers as the court shall direct, of the day on which, and the place where, the said prisoner shall be brought before the justices for his examination; and such prisoner shall, accordingly be carried before such justices, for which such order is a sufficient war-

rant; and in case any creditor shall give two days notice to such prisoner of his or her intention to oppose such prisoner's discharge, then it shall be lawful for such creditor, or any other creditor to oppose such prisoner's discharge, and to put to such prisoner all such questions as to such justices shall appear relevant and proper, and such prisoner shall answer, upon oath all such questions; and if it shall appear to such justices to be expedient that the account of such prisoner and the matters of the schedule of such prisoner, should be further investigated and examined, then it shall be lawful for such justices to adjourn the hearing of the petition of such prisoner to some subsequent general or quarter or adjourned sessions, and at the request of any one or more creditors to order and direct that some one of the examiners appointed by the said justices shall examine into the matters of the schedule, and certify his opinion thereon to the said justices at such general or quarter or adjourned sessions to which the hearing of such petition shall have been adjourned, and of which adjournment all parties interested shall take notice; and that such examiner shall receive for his trouble the sum of 1*l*. and no more for every meeting under such order, to be paid for by the person or persons requiring the same; and in case it shall appear to the said justices upon such examination, or by evidence, that such prisoner is entitled to the benefit of this act, then the said justices shall so declare and adjudge, and shall certify the same to the court.

*After Prisoner's Committal, Affidavits of Creditors may be received in Opposition to Discharge, except in Surrey, Middlesex, or the City of London.*

XXII. That in case any such prisoner, after his commitment shall be moved by any writ of *habeas corpus* or otherwise, from the place of custody, or shall be rendered in discharge of his bail, it shall be lawful for the court to receive the affidavits of any creditor or creditors, or of any other person in opposition to the discharge of such prisoner under this act; and also, if such court shall think fit, to permit interrogatories to be filed for the examination or cross-examination of every person making or joining in such affidavit, and also to stay the discharge of such prisoner until such interrogatories shall be fully answered to the satisfaction of such court: that this shall not extend to any prisoner who shall have been in custody, or arrested, within the counties of Middlesex or Surrey, or the city of London.

*Order of Court for Discharge of Prisoner to be final unless obtained upon false Evidence, &c.—Prisoner may be remanded, and afterwards brought up for Examination.*

XXIII. That such order of the said court for the discharge of such prisoner shall in all cases be final and conclusive, and shall not be reviewed by the said court, unless such court so making the said order shall, after such order made, see good cause to believe that such adjudication, and the order founded thereon, shall have been made on false evidence, or otherwise fraudulently obtained;



notice to  
 notice to be given by such creditor, to rehear the said matter, and make such further order as to them shall seem fit that in case such court, or such justices of the peace shall entertain any doubt, touching any matter alleged against such prisoner at the time of his final examination before mentioned, to prevent his or her discharge, or touching the examination of such prisoner, it shall be lawful for such court or justices, to remand such prisoner to custody, and afterwards to cause such prisoner to be again brought up for examination, as often as to the said court or the said justices shall seem fit.

*In case of false Swearing, Prisoner subject to Punishment inflicted for Perjury.*

XXIV. That if any prisoner who shall apply for his or her discharge under the provisions of this act, or any other persons taking an oath under the provisions of this act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this act, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury.

*When Order for Discharge of Prisoner is made, Court may order that Judgment shall be entered up against the Prisoner in one of the Superior Courts, &c.—Court may permit Execution to be taken out on such Judgment where there are Assets and the Prisoner of Ability to pay.—No Scire Facias necessary.*

XXV. That when any order for the discharge of any prisoner shall be made, the said court may also order that a judgment shall be entered up against such prisoner in some one of the superior courts of Westminster, in the name of the assignee or assignees of such prisoner, or of such provisional assignee as aforesaid, if no other assignee shall then have been appointed and shall have accepted such office, for the amount of the debts of such prisoner which shall at the time of such order remain due and unpaid to the said creditors, and from which such prisoner shall be discharged by such order; and the said prisoner shall execute a warrant of attorney to authorize the entering up such judgment; and such judgment shall have the force of a recognisance; and such order of the court shall be a sufficient authority to the proper officer for entering up such judgment; and when it shall appear to the satisfaction of the said court that such prisoner is of ability to pay such debts, or any part thereof, or that he is dead, leaving assets for that purpose, the court may permit execution to be taken out upon such judgment, or put in force any other power given by this act against the property acquired by such prisoner after his discharge, for such sum of money as under all the circumstances of such prisoner the court shall order; such sum to be distributed rateably amongst the creditors; and such

further proceeding shall and may be had, according to the discretion of the said court, from time to time, until the whole of the debts due to the several persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as such court shall think fit to award; and no *scire facias* shall be necessary to revive such judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the said court, provided always, that in case any such application against such prisoner shall appear to the court to be ill founded and vexatious, it shall be lawful for the court not only to refuse to make any order on such application, but also to dismiss the same with such costs as to the court shall appear reasonable.

*Prisoner, after Judgment is entered up, not to be subject to Imprisonment by reason of the same.*

XXVI. That no prisoner who shall have obtained his or her discharge by virtue of this act, shall at any time after such discharge, be imprisoned, by reason of the judgment so as aforesaid entered up against him in the name of such assignee or assignees as aforesaid, or of any judgment or decree or order obtained for payment of money only, or for debt, damages, contempt of any court, ecclesiastical or civil, by non-payment of money or costs contracted, or growing due at the time of the commencement of such actual custody, and expressed in such discharge, or shall be in prison for any costs, taxed or untaxed, to the payment of which he may be then liable in consequence of or by reason of any contempt, or in order to the purging the same; but that upon every arrest or detainer in prison upon any such judgment or decree order, or for or on account of any such debt, damage, contempt, costs, sum or sums of money, it shall be lawful for any judge of the court from which any such process shall have issued, upon showing to such judge a copy of the order for such discharge as aforesaid, attested by the proper officer of the said court, to release from custody such prisoner as aforesaid, and at the same time, if such judge shall in his discretion think fit, to order the plaintiff in such suit or suits, or any person or persons suing out such process, to pay such prisoner the costs which he or she shall have incurred on such occasion, or so much thereof, as to such judge shall seem just and reasonable, such prisoner causing a common appearance to be entered for him or her, in the action or suit, for any such debt as aforesaid.

*In case of an Action for Escape, this Act to be given in Evidence.*

XXVII. That if any action of escape, or any suit or action be brought against any judge, justice of the peace, sheriff, gaoler, keeper of any prison, or any person, for performing the duty of his office in pursuance of this act, such judge, justice, sheriff, gaoler, or keeper, or other person, may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuited, or discontinue his or her action, or verdict shall pass against him or



her, or judgment shall be had upon demurrer, the defendant shall have treble costs.

*Where Prisoner shall be declared entitled to the Benefit of the Act, no Execution shall issue against such Prisoner for Debt contracted prior to his actual Confinement.—Prisoner may be proceeded against on that which could not be put in force at his Discharge.*

XXVIII. That after the said court shall have declared any prisoner to be entitled to the benefit of this act as aforesaid, no writ *feri facias* shall issue on any judgment before then obtained against such prisoner, for any debt contracted, or cause of action arising before the time of the commencement of such actual custody as aforesaid, except upon the judgment entered up by order of the court; and that if any *scire facias*, or action of debt, or any other suit or action, shall be brought against any prisoner, his or her heirs, executors, or administrators, upon any judgment obtained against any such prisoner, or any statute or recognisance acknowledged by him or her, or any other cause of action arising before commencement of such actual custody, by virtue of this act, except upon the judgment entered up against such prisoner, under the order of the court as aforesaid, it shall be lawful for any such prisoner, his or her heirs, executors or administrators, to plead generally, that such prisoner was duly discharged according to this act, by the order by which such discharge shall have been obtained, and that such discharge remains in force, without pleading any other matter especially, whereto the plaintiff or plaintiffs shall or may reply generally, and deny the matters pleaded as aforesaid, or reply any other matter or thing which may show the defendant or defendants not to be entitled to the benefit of this act, or that such prisoner was not duly discharged according to the provisions of this act, in the same manner as the plaintiff or plaintiffs might have replied, in case the defendant or defendants had pleaded this act, and his discharge by virtue of this act especially; and if the plaintiff or plaintiffs be nonsuited, discontinued his or her action, or verdict pass against him, her, or them, or judgment shall be had on demurrer, the defendant or defendants shall have double costs; provided always, that it shall be lawful to proceed against any prisoner so discharged upon any judgment, recognisance, or other security given, and which could not have been put in force against such prisoner at the time of his obtaining such discharge; any thing in this act to the contrary notwithstanding.

*When Prisoner shall, after Discharge, become entitled to Property which cannot be taken in Execution.—Assignee may apply by Petition to the Court for Relief.—Court may order Prisoner to be apprehended.*

XXIX. That in case any such prisoner, shall, after his discharge out of custody as aforesaid, become entitled to or possessed in his or her own right of any stock in the public funds of this country, or of any bills of exchange, promissory notes, bank notes, or other choses in action, or other property which by law cannot be

taken in execution under the said judgment, so to be entered up in the names of the said assignee or assignees, and such prisoner shall have refused to convey, assign, or transfer such stock, bills of exchange promissory notes, bank notes, or other choses in action, or other property, or so much of them as may be sufficient to satisfy the said judgment, then and in such cases it shall be lawful for the assignee or assignees of such prisoner to apply by petition in a summary way, setting forth the facts of the case to the court, and to pray that the said prisoner may be taken and remanded to custody notwithstanding any such discharge; and thereupon, if upon examination by the said court, and hearing as well the said assignee or assignees as the said prisoner, in case he shall appear, or the assignee or assignees only, in case such prisoner, due notice having been given to him, shall not appear, it shall appear to the said court that the contents of such petitions are true, then and in such case, such court shall so declare and adjudge, and shall thereupon order the said prisoner to be apprehended and remanded to custody, which shall in such cases always be within the walls of the prison from whence such prisoner shall have been discharged, and not within any rules or liberties thereof, until he shall convey, assign, and transfer such stock, bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or as much thereof as the court shall direct, towards the satisfaction of such judgment, to such assignee or assignees, for the general benefit of the creditors of such prisoner.

*When Prisoners, after Discharge, become entitled to Stock in the Public Funds, &c. Court to make further Order.*

XXX. That in case any person or persons, body politic or corporate, shall after the discharge of any such prisoner, become possessed of, or have under his or their power or control, any stock in the public funds of this country, or any legacy, money due or growing due, bills of exchange, promissory notes, bank notes, security for money, goods and chattles, or any other property whatsoever belonging to such prisoner, or held in trust for him, or for his use or benefit, or to which such prisoner shall be in any way entitled; or in case any such person or persons, body politic or corporate, shall be in any manner indebted to such prisoner, it shall and may be lawful for the said court, upon the application of any assignee or creditor of such prisoner, to cause notice to be given to such person or persons body politic or corporate, directing him or them to hold and retain the said property till the said court shall make such further order concerning the same; and thereupon it shall be lawful for the said court further to order such person or persons, body politic or corporate, to deliver over such property, and to pay such debts as aforesaid, or any part thereof, to the receiver of the said court, or to the assignee or assignees of such prisoner, for the general benefit of his creditors entitled to claim under such judgment, entered up by order of the said court as aforesaid.



*Court to appoint Attornies to practise in it.*

XXXI. That the said court to be established by virtue of this act, shall and may admit at their discretion, any number of fit persons to practice in the said court as attornies or agents, on behalf of such prisoners in such actual custody as aforesaid, which admissions shall in all cases be made without the payment of any fee or gratuity whatsoever, and shall be filed of record in the said court; and that in case any person, not admitted on the files of the said court, shall practise in the said court as an attorney or agent, on the behalf of any prisoner in such actual custody as aforesaid, he shall be deemed and taken to be guilty of a contempt of the said court.

*False Affirmation punished as Perjury.*

XXXII. That in cases wherein by this act an oath is required, the solemn affirmation of any person being a quaker, shall, and may be accepted and taken in lieu thereof; and every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties, as are inflicted and imposed upon persons convicted of wilful and corrupt perjury.

*Persons wilfully omitting any thing in Schedule as finally amended, except Wearing Apparel, &c. not exceeding 20l. subject to Three Years Imprisonment.*

XXXIII. That from after the passing of this act, in case any prisoner shall, with intent to defraud his creditor or creditors, wilfully and fraudulently omit in his schedule, as finally amended and filed in the said court, at the time of the order for his discharge from such actual custody as aforesaid, any effects or property whatsoever, or retain or except out of the schedule, as wearing apparel, bedding, working tools, and implements, and other necessaries, more in value than 20l. every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof convicted by due course of law, be adjudged guilty of a misdemeanor, and thereupon it shall and may be lawful for the court before whom such offender shall have been so tried and convicted, to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years.

*All Affidavits used, to be sworn before the Court, &c.—No Proceeding liable to Stamp Duty.*

XXXIV. That all affidavits to be used before the said court, or any commissioner thereof, or any justices of the peace, at their general or adjourned sessions, or any examiner appointed under this act shall and may be sworn before the said court, or any commissioner appointed by the said court for the purpose of taking affidavits, or any master extraordinary in chancery, or commissioner for taking affidavits in any of the superior courts of Westminster Hall; and that no conveyance, assignment, letter of attorney, affidavit, or other proceedings whatsoever before or under any order of the said court, or before any justices of the peace, acting in the execution of this act, shall be liable to the payment of or be chargeable with the payment of any stamp or other duty whatsoever.

*Rate of Payment for the Insertion of Advertisement, 3s.—Not liable to Stamp Duty.*

XXXV. That the sum of 3s. and no more, shall be paid to any printer or proprietor of any newspaper, for the insertion of any advertisement herein-before directed to be inserted in any newspaper, and all printers and proprietors of newspapers, are hereby required to insert the same on payment of the said sum of 3s. for the insertion thereof, in such form, as the said court shall from time to time direct; and that no such advertisement shall be liable to the payment of, or chargeable or charged with any stamp or other duty whatsoever.

*Commissioners' Powers under the Act 53 G. 3. c. 102, extended to this Act.*

XXXVI. And that it is expedient that the powers given to the court established by virtue of an act passed in the 53d year of his late majesty's reign, intituled *An Act for the Relief of Insolvent Debtors in England*, and two acts of the 54th and 56th years of his said late majesty's reign, to amend the said act, should be continued and vested in the court to be established by virtue of this act, in so far as any of the same relate to the persons who have already obtained their discharge by virtue of that act, and their estate and effects; be it further enacted, that the court to be established by virtue of this act shall and may exercise all such powers, and do all such acts, and make all such orders respecting persons who have already obtained their discharge by virtue of the said recited act, or their estate and effects or their respective assignee or assignees, or the provisional assignee appointed by the court established by virtue of the said recited act, as might have been exercised, done, and made by the court established by virtue of the said recited act, in case the said recited act had been continued by this act.

*Former Records to be delivered over to Officers appointed by this Act.*

XXXVII. That all the records, papers, documents, and money, of and belonging to or received under the authority of the court established by virtue of the said recited act, shall immediately after the time when the court to be established by virtue of this act shall have been fully constituted and established as aforesaid, be delivered over to the chief clerk of the said last-mentioned court, by the officer or officers, or other persons having the custody of the same; and which said records shall be deemed and taken to be the records of the court to be established by virtue of this act.

*Assignees' Power not to extend to the Effects of Officers of the Army or Navy, &c. or beneficed Clergymen.—Sequestration of the Profit of Benefice may be applied for.—Portion of Pay of Officers may be obtained by Application.*

XXXVIII. That nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of such prisoner, being an officer of the army or navy, or in the naval or



military service of the East India company, or a beneficed clergyman or curate, to the pay or pension of such officer, or to the income of such benefice or curacy, for the purposes of this act: provided always, nevertheless, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profit of any such benefice, for the payment of the debts of any such clergyman, and the order for such discharge shall be a sufficient warrant for granting of such sequestration, without any writ or other proceedings to authorize the same, and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levari facias*, founded upon any judgment against such clergyman: provided also, that it shall be lawful for the said court to order such portion of the pay or half-pay or pension of any such officer of the army or navy, or naval or military service of the East India company, as on communication from the said court to the secretary at war, or the lords commissioners of the admiralty, or the court of directors of the United East India company, he or they may respectively consent to, by writing under the hand of the said secretary at war, or the lords commissioners or secretary of the admiralty, or the said secretary of the court of directors, to be applied in payment of his debts, and for that purpose to be paid to his assignee or assignees; and such order and consent being lodged in the office of the paymaster of his majesty's forces, or of the treasurer of the navy, or the said secretary of said court of directors, as the case shall require, such paymaster or treasurer or secretary shall give directions accordingly, and such portion of the pay, half-pay, or pension of such officer, as shall be specified in such order and consent, shall be paid to his assignee or assignees, until the said court shall make order to the contrary.

*Justices of Kesteven, &c. may hold their Quarter Sessions for the Purposes of this Act in the Division of Lindsey.*

XXXIX. That the justices of the peace acting for the several parts of Kesteven and Holland in the county of Lincoln, shall and may hold their several general quarter sessions or other sessions of the peace for such parts or divisions respectively, by adjournment or otherwise, in the parts or division of Lindsey, in the said county of Lincoln, for the purposes of this act, and shall and may meet and act therein for such purposes only, and they are hereby empowered to meet and act accordingly.

*Act not to extend to Crown Debtors, unless Treasury give consent.*

XL. That this act shall not extend, or be construed to extend, to discharge any prisoner seeking the benefit of this act, with respect to any debt due to his majesty or his successors, or to any debt or penalty with which he or she shall stand charged at the suit of the crown, or of any person for any offence committed against any act or acts of parliament relative to his majesty's revenues of customs, excise, stamp or salt duties, or any of them, or any branches of the public revenue, or at the suit of any sheriff

or other public officer upon any bail bond entered into for the appearance of any person prosecuted for any offence committed against any act or acts of parliament relative to his majesty's said revenues of customs, excise, stamps, or salt duties, or any other branches of public revenue, unless three of the lords commissioners of his majesty's treasury for the time being shall certify under their hands their consent to such discharge.

*Prisoners under Writ of Capias in Cases of Extents as herein mentioned, may apply to the Barons of Exchequer to be discharged.*

XLI. That it shall and may be lawful for any person or persons who may now or shall hereafter be imprisoned under or by virtue of any writ of *capias*, in any immediate extent or extents issued and remaining in force at the instance or for the benefit and reimbursement of any surety or sureties, or other person or persons, or the inhabitants of any parish, ward, or place, who shall or may have advanced and paid the debt to the crown, and by reason whereof the lords commissioners of his majesty's treasury may not be authorized to give their consent last aforesaid to apply to the barons of his majesty's court of exchequer in England or Scotland, for his, her, or their discharge, giving one month's previous notice in writing to the surety or sureties, or person or persons aforesaid, or to the churchwardens or overseers of the parish, ward, or place at whose instance or whose benefit respectively such extent or extents shall remain in force, of the intention of such person or persons so imprisoned to make such application, and an enumeration and description of all and every the property, debts, and effects whatsoever, of such person or persons in his, her, or their own possession or power, or in the possession or power of any other person or persons, for his, her, or their use; and for the said court to whom such application shall be made to order such person or persons to be brought before them, or before any baron of the said court, to be examined upon oath touching and concerning his, her, or their property and effects; and if such person or persons respectively shall, upon such examination, make a full disclosure of all his, her, or their property and effects, and it shall otherwise appear, to the satisfaction of the said court, reasonable and proper that such person or persons should be no longer imprisoned under such writ, for such court or baron to order, or writ of *supersedeas quoad corpus* to be issued out of the said court for the liberation of such person or persons from such imprisonment: provided always, that no such liberation as aforesaid shall be held or deemed to satisfy or supersede such extent, or any proceedings thereon, except as to such imprisonment as aforesaid, or the debt or debts seized under and by virtue thereof, and for which such person or persons shall be so imprisoned.

*Bankrupts not entitled to Discharge under this Act, unless in Custody for Three Years.*

XLII. That no prisoner against whom any commission of bank-



rupt shall have issued, and shall remain in force, and who shall not have obtained a certificate of his or her conformity to the several statutes concerning bankrupts under such commission, shall be entitled to be discharged by virtue of this act from any debt for which such prisoner shall be detained in custody, and which might have been proved under such commission, unless such prisoner shall have been so detained in prison for the space of three years before the time when such prisoner shall apply for his or her discharge under this act.

*No Person having the Benefit of an Insolvent Act shall be entitled to further Relief within Five Years, unless Three-fourths in Number and Value of the Creditors consent.*

XLIII. That no person who shall have been at any time discharged by virtue of this act, or of any other act for the relief of insolvent debtors, shall again be entitled to the benefit thereof within the space of five years after such discharge, unless three-fourths in number and value of the creditors against whom such person shall seek to be discharged by virtue of this act shall signify his, her, or their assent to such discharge, or it shall be made appear, to the satisfaction of the court to be established by virtue of this act, that such person has, since his or her former discharge, endeavoured, by industry and frugality, to pay all just demands upon him or her, and has incurred no unnecessary expense, and that the debts which such person has incurred subsequent to such former discharge have been necessarily incurred for the maintenance of such person, or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, and his or her family.

*Mode of proceeding with Prisoners of unsound Mind.*

XLIV. That if any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind, and therefore incapable of taking the benefit of this act in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division, or place wherein such prison shall be, to attend at the said prison, and inquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means that any such prisoner is of unsound mind, such justice or justices shall go to the said prison, and by his, her, or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall inquire into the state of mind of such prisoner; and if it shall appear to such justice or justices, upon such inquiry, that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this act in such a manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the same to the court to be established

by virtue of this act; and thereupon it shall be lawful for such court, at the instance of any person or persons on behalf of such prisoner, to order notice to be inserted in the London Gazette, and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he or she was committed to such prison, as the said court shall see fit; and shall in such order specify and direct that application will be made to such court for the discharge of such prisoner on a day to be specified in such order, being twenty days at least from the day of publication of such one of such gazette and newspaper containing such notice as shall be last published; which notice, together with service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attorneys in such suit, shall be deemed sufficient to authorize the said court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of such act; and such court shall proceed accordingly, and shall discharge such prisoner, and do all other acts under this act, in case it shall appear that such prisoner might have obtained his or her discharge under this act if of sound mind.

*Officers of the Court to produce Schedules and Proceedings of Court when required.*

XLV. That the proper officer of the court to be established by virtue of this act shall, on the reasonable request of such prisoner, or of any creditor or creditors of such prisoner, or his, her, or their attorney, produce and show to such prisoner, creditor, or creditors, or his or their attorney, at such times as the said court shall direct, such petition, schedule, order, and judgment, and all other orders and proceedings made and had in such matter; and that a true copy of every such petition, schedule, order, judgment, and other proceedings, signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order, judgment, or other proceedings, as the case may be, without being written on stamped paper, shall at all times be admitted, in all courts whatever, as legal evidence of the same respectively.

*Prisoners may, after their Discharge, be examined as to their Estate and Effects, on application of Assignees.—Such Persons refusing to appear, or to answer Questions, &c. may be committed.*

XLVI. And that the estates, both real and personal, of any prisoner who may be discharged by virtue of this act may not be sufficiently described or discovered in the schedule before directed to be delivered upon oath by such prisoner, or the assistance of such prisoner may be necessary to adjust, make out, recover, or manage his estate or effects, for the benefit of his or her creditors; be it therefore enacted by the authority aforesaid, that it shall and may be lawful to and for the assignee and assignees of the estate



and effects of any such prisoner who shall obtain his or her discharge in pursuance of this act, from time to time to apply to the court to be established by virtue of this act, that such prisoner may be further examined as to any matters or things relating to his or her estate and effects, either by such court, or by any justice of the peace for the county, riding, division, or place where such prisoner shall then reside; and if such court shall direct any such examination before any such justice, such justice shall send for or call before him such prisoner by such warrant, summons, ways, or means as he shall think fit; and if such prisoner shall appear before such justice, such justice shall examine him or her, upon oath or otherwise, as to such matters and things as such assignee or assignees shall desire, relating to the estate and effects of such prisoner; and if any such prisoner, on payment, or tender of payment, of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, not having a lawful excuse allowed by such justice, or being come before such justice, shall refuse to be sworn, or to answer such questions as by such justice shall be put to him or her relating to the discovery of his or her estate and effects vested, or intended to be vested, in such assignee or assignees as aforesaid, as required by the order of the said court, such justice shall certify such default to the said court; and thereupon, and also in case such prisoner shall neglect or refuse to appear before such court, to be examined by such court, if the court shall think fit so to order, or appearing before such court, shall refuse to be sworn, or to answer such questions as shall be put to him or her relating to the discovery of his or her said estate or effects, then and in any of such cases it shall be lawful for such court, by warrant, to commit such prisoner so offending to the common gaol of any county or place, there to remain without bail or mainprize until such time as he or she shall submit himself or herself to such court, and answer, upon oath or otherwise, as shall be required, to all such lawful questions as shall by such court be put, or ordered to be put, to him or her, for the purposes aforesaid.

*Assignees to be examined within Six Months after Appointment.—  
Dividends remaining in their Hands for Twelve Months shall be immediately paid into Court.*

XLVII. That the said court to be appointed by virtue of this act, shall immediately after the end of six months next after the appointment of an assignee or assignees under this act, at the request of any one or more creditors, summon such assignee or assignees before him, and examine him, her, or them, upon oath or otherwise, touching, his, her, or their receipts and payments, and shall thereupon order the money in the hands of such assignee or assignees to be paid into the said court, and that such dividend be made of the estate and effects of such prisoner as it may think proper: and in case any dividend or dividends shall remain in the hands of such assignee or assignees for the space of twelve months

next following the declaring thereof, it shall and may be lawful to and for such court, and it is hereby authorized, to order and direct that such unclaimed dividend or dividends shall be immediately paid into court; and in default of payment of such dividend or dividends by the time by the said court to be for that purpose limited, it shall and may be lawful to and for the said court to make such summary remedy for the purpose, by a distress and sale of the goods and chattels of such assignee or assignees, as to them shall seem proper; and if no sufficient distress can be found, then and in such case the said court shall be at liberty to commit the offender to the common gaol or house of correction, without bail or mainprize, there to remain until the said court shall make other order to the contrary.

*Costs how to be recovered.*

XLVIII. That in all cases in which the said court is by this act authorized to award costs against any person or persons, it shall and may be lawful for the said court to cause such costs to be recovered from such person or persons in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered.

*Places where Petitions and Proceedings relating to Persons in Custody shall be heard.*

XLIX. And it may be convenient that the hearing of the petition, and other proceedings relating thereto, of all persons confined for debt, damages, costs, sum or sums of money, or contempt for non-payment of money, in the custody of the sheriffs of the city of London, and sheriff of the county of Middlesex, and of the warden of the Fleet prison, should be heard and determined in some convenient place the nearest to the prisons of such sheriffs; be it therefore enacted, that all petitions, and other proceedings relating thereto, of all persons confined as aforesaid, and in the custody of the sheriffs of London, and sheriff of Middlesex, and of the warden of the Fleet prison, may, if the said court shall think fit, be heard and determined at the Guildhall in and for the said city of London, or at the sessions house in the Old Bailey, or at such other place in the city of London as the said commissioner for the time being shall appoint for that purpose.

*Persons discharged from Contempts of Court, for Non-payment of Costs, to be relieved from other Costs, &c.*

L. That all persons who have been discharged under any act for the relief of insolvent debtors from contempts of any court for non-payment of money or costs, shall be deemed and taken to have been discharged, not only from costs ordered to be paid, but also from all costs which such persons would be liable to pay in consequence or by reason of such contempts, or on paying the same; and also that all persons from whose demands for costs any person shall be discharged by virtue of this or any former act or acts, shall be deemed and taken to be creditors of such last-mentioned



persons, and entitled to the benefit of all the provisions made for creditors by such act or acts.

*This Act not to defeat the Proceedings in any Commission of Bankrupt.*

LI. That nothing in this act contained shall extend, or be construed to extend, to defeat the proceedings in any commission of bankrupt which may be issued against any prisoner who may claim the benefit of this act, before such prisoner shall have obtained an order for his discharge under this act, but that every such commission shall have relation to avoid any assignment of the estate and effects of the said prisoner under this act, as such commission would have had to avoid any assignment by such prisoner if this act had not been made.

*Continuance of Act.*

LII. That this act shall continue in force until the first of June one thousand eight hundred and twenty-five, and thenceforth until the end of the next session of parliament, and no longer.

# INDEX.

---

- A.
- ABATEMENT, 9.  
 Abeyance, 10.  
 Abduction of a Wife, 10.  
 Abjuration, 12.  
 Acceptance, 13.  
 \_\_\_\_\_, in law, 14.  
 \_\_\_\_\_, absolute, *ib.*  
 \_\_\_\_\_, conditional, *ib.*  
 \_\_\_\_\_, partial, *ib.*  
 \_\_\_\_\_, upon Honor, 15.  
 Accessary, *ib.*  
 Acquittal, 19.  
 Acquittance, *ib.*  
 Act of Parliament, *ib.*  
 Action, 20.  
 Actions, *ib.*  
 Actions of Account, 21.  
 Administrator, 22.  
 Administration, 36.  
 Admiralty, *ib.*  
 Adultery, 37.  
 Advowson, 40.  
 Affidavit, 42.  
 Affinity, 43.  
 Affray, 45.  
 Agent, *ib.*  
 Agreement, 46.  
 Alehouses, *ib.*  
 Aliens, 51.  
 Alienation, 53.  
 Alimony, *ib.*  
 Allegiance, *ib.*  
 Ambassador, *ib.*  
 Amendment, *ib.*  
 Annuity, 54.  
 Apostacy, 55.  
 Apothecaries, *ib.*  
 Appeal, *ib.*  
 Appearance, 57.  
 Apprentice, 58.  
 \_\_\_\_\_ (Marine), 59.  
 \_\_\_\_\_ to Manufacturers,  
     60.  
 Appropriation, 62.  
 Approver, *ib.*  
 Arbitration, 62.  
 Arbitrator, 63.  
 Archbishop, *ib.*  
 Arches Court, *ib.*  
 Arraign, 64.  
 Arraignment, *ib.*  
 Arrest, *ib.*  
 \_\_\_\_\_ of Judgment, 65.  
 Arson, *ib.*  
 Articles of the Navy, 66.  
 Artificers, 68.  
 Assault, 70.  
 Assets, 71.  
 Assignment, 72.  
 \_\_\_\_\_ by Widows, 73.  
 Assize, *ib.*  
 Assumpsit, *ib.*  
 Attachment, 76.  
 Attaint, *ib.*  
 Attainder, *ib.*  
 Attorney, 78.  
 \_\_\_\_\_ General, *ib.*  
 Attornment, 79.  
 Auctioneers, *ib.*  
 Audita Querela, 81.  
 Authority, 82.  
 Averment, *ib.*  
 Avowry, 83.  
 Award, *ib.*
- B.
- Bail, 87.  
 Bailiff, 88.  
 Bailment, *ib.*  
 Ballast, 89.



- Banishment, 89.  
 Bank of England, *ib.*  
 Bank Notes, *ib.*  
 Bankers' Notes, 90.  
 Bankrupt, 91.  
 Baptism, 126.  
 Bar, 127.  
 Baron, (Court of), 263.  
 Baron and Feme, 127.  
 Bastard, 129.  
 ——— Ligne, 132.  
 Battery, 133.  
 Bawdy-house, 134.  
 Beadle, *ib.*  
 Behaviour, *ib.*  
 Benefit of Clergy, 137.  
 Benefit Clubs, 139.  
 Bigamy, 140.  
 Bills of Exchange, 142.  
 Bill of Rights, 146.  
 ——— Sale, 147.  
 Billingsgate Market, 148.  
 Bishop, *ib.*  
 Black Act, *ib.*  
 Blasphemy, 149.  
 Blood, (Corruption of), 198.  
 Bond, 149.  
 ——— Post Obitt, 152.  
 Books, *ib.*  
 Borough, English, 153.  
 Brewers, 154.  
 Bribery, *ib.*  
 Bricks and Tiles, *ib.*  
 Bridges, 155.  
 Brokers, *ib.*  
 Buildings, 156.  
 Bullion, *ib.*  
 Burgage Tenure, *ib.*  
 Burglary, *ib.*  
 Butcher, 158.  
 Butter, *ib.*  
 Buying and Selling, 159.  
     C.  
 Cables, 160.  
 Capias ad respondendum, *ib.*  
 ——— satisfaciendum, *ib.*  
 Carrier, *ib.*  
 Case, (Action on the), 162.  
 Cattle, *ib.*  
 Caveat, *ib.*  
 Certiorari, 162.  
 Challenge, 163.  
 Champarty, *ib.*  
 Chancellor, *ib.*  
 Chancery, (Court of), 203.  
 Character, 164.  
 Chattels, *ib.*  
 Cheat, 165.  
 Checks, (Bankers'), 90, 166.  
 Church, 166.  
 ——— reviling of, 476.  
 Churchwardens, 167.  
 Clergy, 174.  
 ——— Benefit of, 137.  
 Clement's Inn, 172.  
 Clubs, (Benefit), 139.  
 Coals, 174.  
 Codicil, 175.  
 Coffee, *ib.*  
 Coin, *ib.*  
 Combinations, 176.  
 Combustibles, 294.  
 Commitment, 176.  
 Common, 179.  
 Common Law, 181, 204.  
 ——— Pleas, 181.  
 ——— of Piscary, *ib.*  
 ——— of Estovers, 182.  
 ——— Prayer, *ib.*  
 Composition for Tiches, *ib.*  
 Compounding Offences, *ib.*  
 Confession of Offences, *ib.*  
 Confirmation of an Estate, 183.  
 Conjuratiou, *ib.*  
 Consanguinity, 184.  
 Consideration, *ib.*  
 Conspiracy, *ib.*  
 Constable, *ib.*  
 Construction of Statutes, 189.  
 Contempt, 190.  
 Contract, *ib.*  
 Conveyance, *ib.*  
 Conviction, 76, 190.  
 Coparcenary, 191.  
 Copartnership, *ib.*  
 Copyhold, 193.  
 Copyright, 194.  
 Corn, *ib.*  
 Corody, 196.  
 Coroner, *ib.*

- Corruption of Blood, 198.  
 Covenants, 199.  
 Coverture, 200.  
     D.  
 Deacon, 210.  
 Dean, *ib.*  
 Death of Persons, 211.  
 Debt, *ib.*  
 Deceit, *ib.*  
 Declaration, 212.  
 Deed, 213.  
 Deeds, Registry of, 468.  
 Defeasance, 217.  
 Demurrer, *ib.*  
     ——— to Evidence, 218.  
     ——— to Indictments, *ib.*  
 Denizen, *ib.*  
 Descent, 219.  
 Detinue, 220.  
     ——— of Charters, *ib.*  
 Devise, *ib.*  
 Dignity, *ib.*  
     ———, ecclesiastical, *ib.*  
     ———, disfranchisement, 221.  
 Disseisin, *ib.*  
 Dissenters, *ib.*  
 Distress, *ib.*  
     ——— for Penalties, 225.  
     ——— of the King, *ib.*  
 Distribution of Intestate's Effects,  
     *ib.*  
 Divorce, 226.  
 Dogs, *ib.*  
 Dower, 227.  
 Drunkenness, 228.  
 Duelling, 229.  
 Duress, *ib.*  
 Dyers, 230.  
     E.  
 East India Company, 231.  
 Ecclesiastical Courts, *ib.*  
 Ejectment, *ib.*  
 Election of Members of Parlia-  
     ment, 223.  
 Elegit, 238.  
 Elopement, *ib.*  
 Embezzlement, *ib.*  
 Embracery, 239.  
 England, Bank of, 89.  
     ——— Curtesy of, 207.  
 Equity, 239.  
     ——— of Redemption, *ib.*  
 Error, *ib.*  
 Escape, 240.  
 Escheat, 241.  
 Essoin, 242.  
 Estate, *ib.*  
 Estrays and Waifs, 243.  
 Eve-droppers, 244.  
 Evidence, *ib.*  
 Exchange, 248.  
     ———, Bills of, 142.  
 Exchequer, 205, 249.  
     ——— Chamber, 250.  
 Excise, *ib.*  
 Execution, 252.  
 Executor, *ib.*  
 Extinguishment, *ib.*  
 Extortion, *ib.*  
     F.  
 Fairs and Markets, 253.  
 False Imprisonment, 254.  
     —— News, *ib.*  
     —— Oath, *ib.*  
 Farm, 255.  
 Fealty, *ib.*  
 Fee simple, *ib.*  
     —— qualified, 256.  
     —— conditional, *ib.*  
 Fee-farm, *ib.*  
 Felo de se, *ib.*  
 Felony, *ib.*  
 Feoffment, 262.  
 Feme and Baron, 127.  
 Feræ Naturæ, 263.  
 Fieri Facias, 264.  
 Filacer, *ib.*  
 Finding, 265.  
 Fines for Offences, 267.  
 Fires and Firecocks, 268.  
 Fireworks, *ib.*  
 First Fruits, *ib.*  
 Fish, 269.  
 Forcible Entry, 270.  
 Forestalling, 271.  
 Forgery, 272.  
 Forma pauperis, 274.  
 Franchise, *ib.*  
 Fraud, *ib.*  
 Friendly Societies, 276.



## G.

Game, 279.  
 Gaming, 286.  
 Gaol, 290.  
 Gaoler, 292.  
 Gavelkind, 293.  
 Gift, 294.  
 Gleaning, *ib.*  
 God and Religion, Offences  
 against, 294.  
 Goods, Sale of, 485.  
 Grant, 294.  
 Guardian, *ib.*  
 Gunpowder and Combustibles,  
 297.  
 Gipsies, 298.

## H.

Habeas Corpus, 298.  
 Hanging, 300.  
 Hawkers and Pedlars, *ib.*  
 Hay and Straw, 301.  
 Heir, *ib.*  
 Heir-apparent, *ib.*  
 Heiress, *ib.*  
 Hemp and Flax, *ib.*  
 Hereditaments, *ib.*  
 Heresy, 302.  
 Heriot, *ib.*  
 Herrings, 303.  
 Highway, *ib.*  
 Highwaymen, 305.  
 High Treason, *ib.*  
 Homicide, *ib.*  
 Horse-dealers, 308.  
 Horses, 309.  
 Horse Races, 310.  
 Housebreaking, 311.  
 House, *ib.*  
 Hunting, 312.  
 Husband and Wife, *ib.*  
 Hustings, Court of, 205.

## I.

Idiots, 313.  
 Ignorance, 316.  
 Imparlance, *ib.*  
 Impeachment, 317.  
 Imposture, *ib.*  
 Impressing Men, *ib.*  
 Inclosures, 318.  
 Incorporation, 321.

Indictment, 322.  
 Indorsement, 324.  
 Induction, 325.  
 Infant, *ib.*  
 Information, 327.  
 Injunction, 328.  
 Inns and Innkeepers, 330.  
 Inquest, 331.  
 Inquiry, *ib.*  
 Inrolment, *ib.*  
 Insolvent Debtors, 332.  
 Insurances, 342.  
 Interest, 358.  
 Intestates, 359.  
 Intrusion, *ib.*  
 Investiture, *ib.*

## J.

Jactitation of Marriage, 360.  
 Jews, *ib.*  
 Joint Tenants, *ib.*  
 Jointure, 362.  
 Judge, 363.  
 Judgment, 364.  
 ———, Reversal of, 475.  
 Jury, 365.  
 ——— of Matrons, 366.  
 Justice, 367.

## K.

Keeper of the Great Seal, 371.  
 ——— Privy Seal, *ib.*  
 King's Bench, Court of, 205.  
 ——— Prison, 373.

## L.

Labourers, 373.  
 Landlord, *ib.*  
 Land, *ib.*  
 Land Tax, *ib.*  
 Larceny, 374.  
 Latitat, 375.  
 Law of England, 376.  
 ——— Nations, *ib.*  
 Lease, 377.  
 Legacy, 379.  
 Letter, *ib.*  
 ——— of Marque, 380.  
 Levavi Facias, *ib.*  
 Libel, *ib.*  
 Lien, 381.  
 Life Estates, *ib.*  
 Limitation, *ib.*

- Linen, 383.  
 Literary Property, *ib.*  
 Liturgy, 387.  
 Lodgings, *ib.*  
 London, Custom of, 209, 389.  
 Lyon's Inn, 389.  
     M.  
 Maihem, 390.  
 Maintenance, *ib.*  
 Mainprise, *ib.*  
 Malice, *ib.*  
 Mandamus, 391.  
 Manor, *ib.*  
 Manslaughter, *ib.*  
 Manufacturers, *ib.*  
 Market, 393.  
 Marshalsea, Court of, 205, 394.  
 Marriage, 394.  
 Martial, Court, 205.  
 Master and Servants, 394.  
 Matrons, Jury of, 366.  
 Members of Parliament, Election of, 223.  
 Memory, 397.  
 Merchant, *ib.*  
 Militia, *ib.*  
 Mill, *ib.*  
 Mines, *ib.*  
 Misnomer, 398.  
 Money, *ib.*  
 Monopoly, 399.  
 Mortgage, *ib.*  
 Mortmain, 401.  
 Murder, 402.  
 Mute, *ib.*  
     N.  
 Naturalization, 402.  
 Navy, Articles of, 66.  
 Necessity, 402.  
 News, 403.  
 Nisi Prius, Court of, 205.  
 Nonconformity, 403.  
 Notes, Promissory, 405.  
 Notice, *ib.*  
     ——— to quit, 406.  
 Nuncupative Will, *ib.*  
 Nuisance, *ib.*  
     O.  
 Offence, 406.  
 Offences, Fines for, 267.  
 Offerings, 406.  
     ——— of the King, *ib.*  
 Office, *ib.*  
 Original, 407.  
 Overseers of the Poor, *ib.*  
 Ouster le main, 413.  
 Outlawry, *ib.*  
     P.  
 Paper, 413.  
 Papists, 414.  
 Paraphernalia, *ib.*  
 Pardon, *ib.*  
 Parents and Children, 415.  
 Parish, *ib.*  
 Parish Clerk, *ib.*  
 Parishioner, *ib.*  
 Parliament, 415.  
     ———, Act of, 19.  
 Parole, 420.  
     ——— Arrest, *ib.*  
     ——— Demurrer, *ib.*  
 Parson, *ib.*  
 Parsonage, *ib.*  
 Partition, 421.  
 Partners, *ib.*  
 Part Owners, *ib.*  
 Passport, *ib.*  
 Pawnbrokers, *ib.*  
 Payment, 424.  
 Peace, Articles of, 68, 424.  
 Peers, 424.  
 Persons, Death of, 211.  
 Pie Poudre, Court of, 205.  
 Promissory Notes, 405.  
     Q.  
 Quarter Sessions, 457.  
 Queen, 458.  
 Queen-Dowager, *ib.*  
     R.  
 Rack Rent, 459.  
 Rape of Women, *ib.*  
 Receipts, *ib.*  
 Receiver of Stolen Goods, *ib.*  
 Recognisance, *ib.*  
 Record, 465.  
 Recovery, *ib.*  
 Register, 466.  
 Registry of Deeds, 468.  
 Regrating, 469.  
 Release, *ib.*



- Religion, Articles of, 68.  
 Religion, Offences against, 294.  
 Remainder, 469.  
 Rent, *ib.*  
 Replevin, *ib.*  
 Reprieve, 470.  
 Requests, Court of, 205.  
 Rescous, 471.  
 Residence, 473.  
 Restitution of Stolen Goods, 471.  
 Revenue Royal, 474.  
 Reversal of Judgment, 475.  
 Reversion, *ib.*  
 Reviling of the Church, 476.  
 Right, *ib.*  
 Rights, Bill of, 146.  
 Riot, 476.  
 Robbery, 482.  
 Roman Catholics, 484.  
 Royal Assent, *ib.*  
 Rules of Court, *ib.*  
     S.  
 Sacrilege, 485.  
 Sale, Bill of, 147.  
 Sale of Goods, 485.  
 Salt, 486.  
 Saving Banks, 488.  
 Scandalum Magnatum, 493.  
 Scavengers, *ib.*  
 Scotland, 499.  
 ———, Court of Session of, 205.  
 Sea, 500.  
 Sea-banks, *ib.*  
 Seamen, *ib.*  
 Search-warrants, 503.  
 Securities, 504.  
 Seduction of Artificers, 505.  
 Seizure of Goods, *ib.*  
 Selling and buying, 159.  
 Sequestration, 505.  
 Serjeant at Law, 506.  
 Serjeant's Inn, *ib.*  
 ———, Fleet-street, 507.  
 Serjeanty, 508.  
 Servants, 509.  
 Set-off, 513.  
 Sewers, 514.  
 Sheep, 519.  
 Sheriff, *ib.*  
 Ships, 521.  
 Ships wrecked, 521.  
 Shroud, 523.  
 Shrubs, *ib.*  
 Shoemakers, *ib.*  
 Silkthrowing, 525.  
 Simony, *ib.*  
 Slavery, 526.  
 Smugglers, 527.  
 Soccage, 535.  
 Soldiers, *ib.*  
 Stage Coaches, 542. 542  
 Stamps, 552.  
 Staple Inn, 565.  
 Star Chamber, 566.  
 Statute, *ib.*  
 ——— Merchant, *ib.*  
 Statutes, 567.  
 ———, Construction of, 189.  
 Stolen Goods, 567.  
 ———, Receivers of, 459.  
 ———, Restitution of, 471.  
 Stores, 568.  
 Subpœna, 571.  
 Surety of the Peace, *ib.*  
 Surrender, 572.  
 Swearing, 573.  
 Swindlers, *ib.*  
     T.  
 Tax, 573.  
 Testament, 631.  
 Treasurer of the County, 617.  
 Trespass, 618.  
 Trover, *ib.*  
 Trust, 619.  
 Turnpikes, 620.  
     U.  
 Umpirage, 623.  
 Universities, Court of, 206.  
 Usance, 624.  
 Use, *ib.*  
     V.  
 Vagrants, 620.  
 Venue, 621.  
 Verdict, *ib.*  
 Vestry, 622.  
 Vicar, *ib.*  
 Vicarage, *ib.*  
 Vicinage, *ib.*  
 View, 623.  
 Villain, *ib.*

- W.  
 Wagers, 625.  
 Waifs, 243, 625.  
 Wales, Court of, 206, 625.  
 War, Articles of, 68.  
 Wardmote, 626.  
 Wardship, *ib.*  
 Warrant, *ib.*  
 Warrant, 627.  
 Warren, 628.  
 Waste, *ib.*  
 Watch and Ward, 629.  
 Way, 630.  
 Weights and Measures, *ib.*  
 Wife, abduction of, 10.  
 Will and Testament, 631.  
 Witchcraft, 633.  
 Witness, *ib.*  
 Women, 634.  
 Wool, 635.  
 Woollen Cloth, *ib.*  
 Wool-combers, 636.  
 Writ, *ib.*  
 — of Inquiry of Damages, *ib.*  
 Y.  
 Years, 637.  
 York, *ib.*

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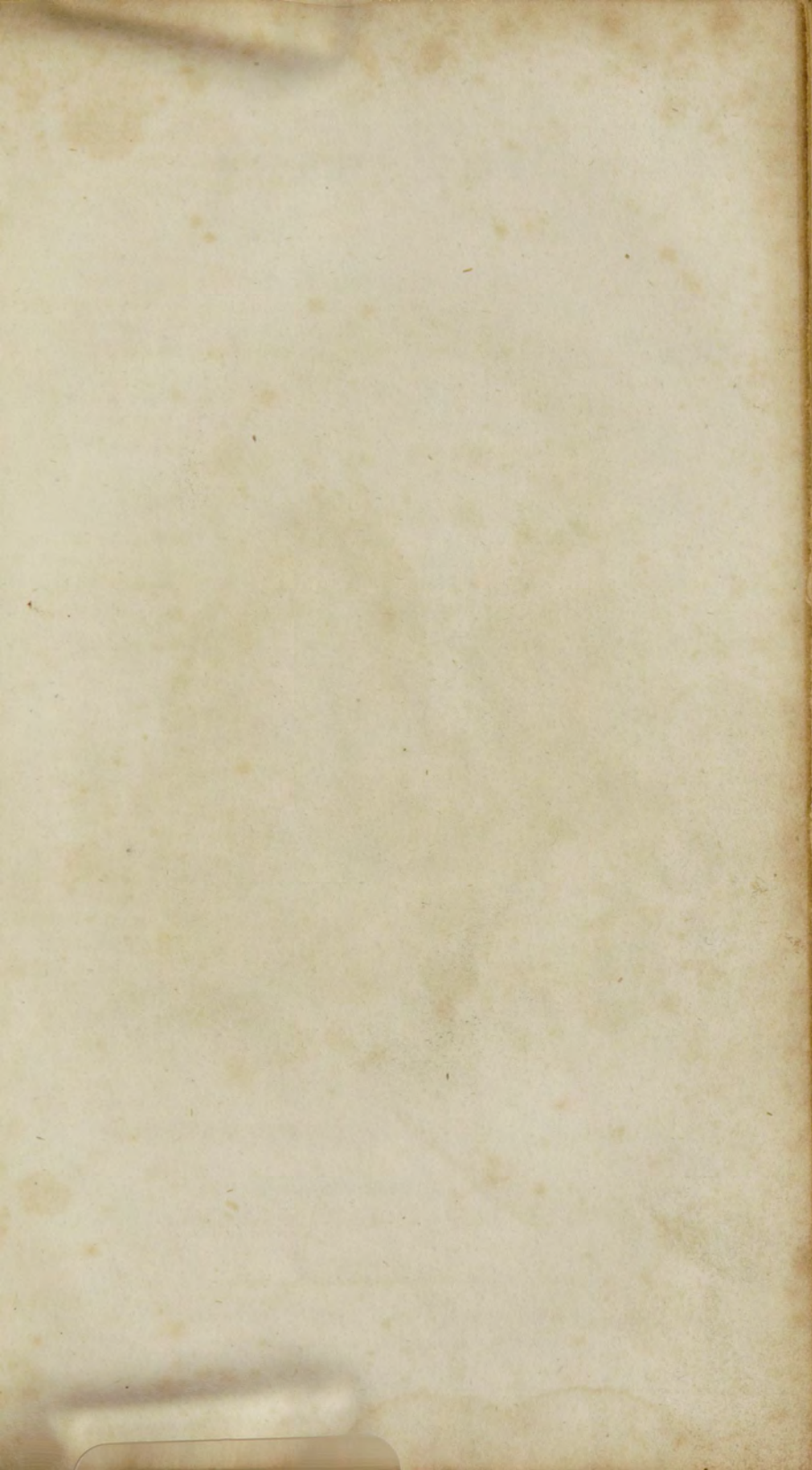
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### DIRECTIONS TO THE BINDER.

Clement's Inn . . . . .	172
Lyon's Inn . . . . .	389
New Inn . . . . .	403
Serjeant's Inn . . . . .	507
Inner Temple Hall . . . . .	596
Interior of Middle Temple Hall . . . . .	597

\* \* \* The Treatise on English Law to follow the Preface.







THE LORD CHANCELLOR.

*Sketched by A. Wivell & Engraved by T. Wright.*

*London, Published by Tho<sup>t</sup> Kelly, 17, Paternoster Row, Jun<sup>r</sup> 27, 1821.*



**SUPPLEMENT**  
TO  
**ADLINGTON'S**  
**ENCYCLOPÆDIA OF LAW,**  
OR  
**CORRECT BRITISH LAWYER;**  
CONTAINING  
*COPIOUS ABSTRACTS*  
OF THE  
**ACTS OF PARLIAMENT**  
*Passed in the late Sessions, relative to the most important Subjects*  
CONNECTED WITH  
THE TRADE, COMMERCE, MANUFACTURES,  
AND AGRICULTURE  
OF THE  
**United Kingdom.**

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COLLECTED AND ARRANGED  
By **JOHN HENRY ADLINGTON, Esq.**

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**L O N D O N :**

PUBLISHED BY T. KELLY, 17, PATERNOSTER ROW.

1824.

REVISED EDITION

AND

ENGLISH LAW

BY

W. G. L. G. G. G.

OF

THE

UNIVERSITY OF

OXFORD

AND

OF

THE

INSTITUTIONS

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THE

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# CONTENTS

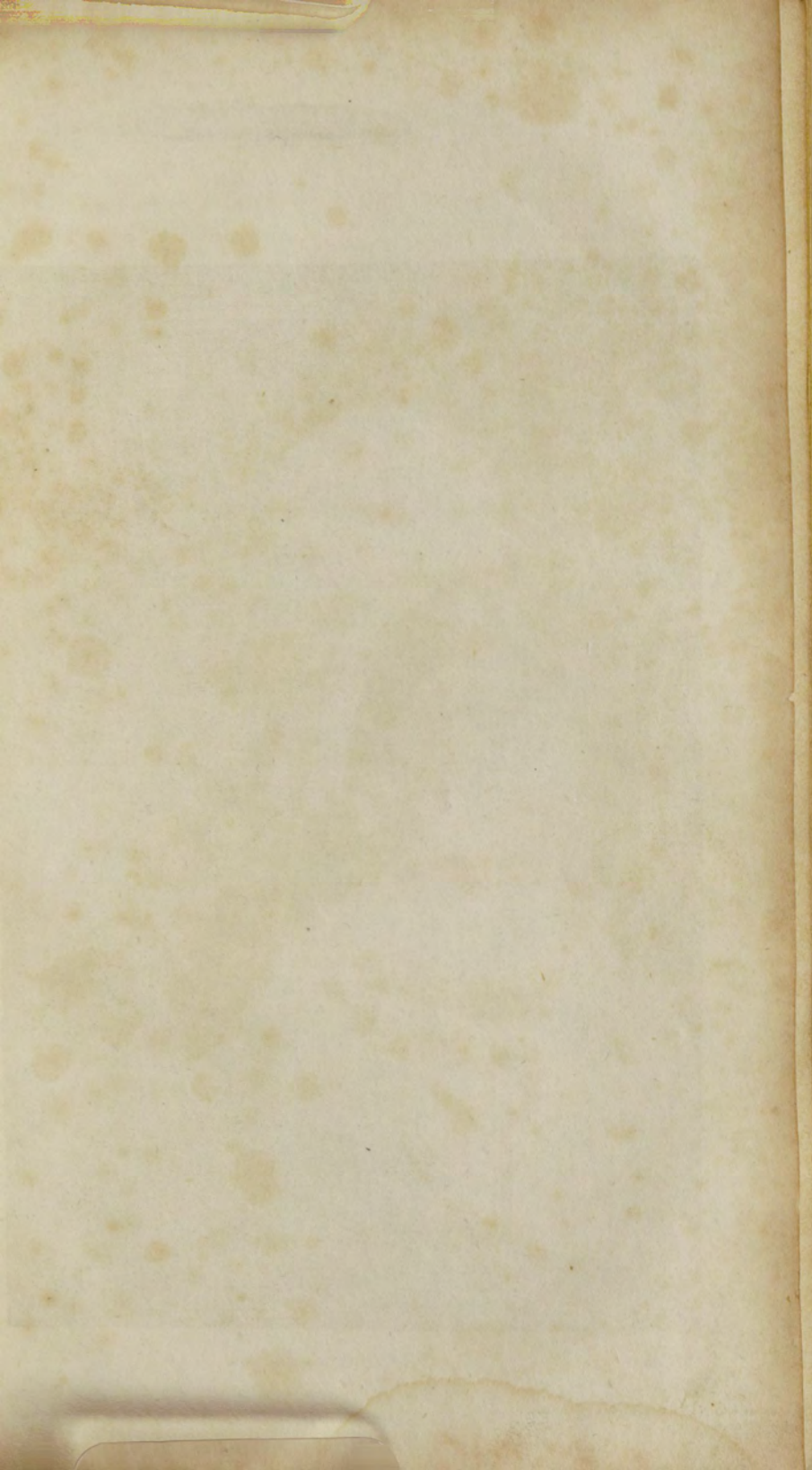
OF THE

## SUPPLEMENT.

	PAGE
Insolvent Debtors .....	1, 76, 169
Assessed Taxes, Window Duty.....	6
House Duty .....	8
Male Servants.....	10
Tax on Dogs .....	12
Pleasure Horses, &c. ....	12
Carriages .....	13
Horse Dealers .....	15
Coach-makers, &c. ....	15
Hair Powder .....	15
Armorial Bearings .....	15
Composition of Assessed Taxes.....	16, 91, 158
Metropolis Police Act.....	25
Cruelty to Animals .....	46
Licensing Public-Houses .....	48
Bankruptcy Laws .....	60, 205
Enrolment of Annuities .....	66
Carriages and Stage Coaches .....	67
Smuggling .....	74
Marriage Act.....	84, 141, 157
Masters and Servants .....	88
Employment of Male Convicts .....	95

	PAGE
Capital Punishments .....	96
Beer Act .....	99, 161
Interment of Felo de se .....	106
Benefit of Clergy extended to Larcenies .....	106
Benefit of Clergy, and other purposes.—Felonies.....	107
Consolidate and amend the Laws of Prisons.....	111
Customs, relative of Great Britain .....	128
Registering of Ships .....	149
Innkeepers' Allowances for Quartering Soldiers.....	155
Saving-Banks .....	176
Weights and Measures .....	188
Vagrants .....	198







SIR JOHN LEECH,  
*Vice Chancellor.*

*Sketched by A. Wivell & Engraved by T. Wright.*

*London. Published by Tho. Kelly, 17, Paternoster Row, Mar. 3, 1821.*



## SUPPLEMENT

TO

## ADDLINGTON'S BRITISH LAWYER.

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### INSOLVENT DEBTORS.

**BY** the 3 Geo. IV. c. 123, it is enacted, that it shall be lawful for the Professional Assignee of the Court for Relief of Insolvent Debtors, to take possession of all the real and personal estate and effects of every prisoner, who shall subscribe the petition, and execute the conveyance and assignment mentioned in the 1 Geo. IV. c. 119. and, if the court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof, and, if the court shall so order, of the real estate of such prisoner, according to the provisions and for the purposes of the said act, and out of the proceeds to defray, in the first place, all such expences of taking possession of and selling the same as shall be allowed by the court. § 1.

The professional assignee may sue in his own name for the recovery of any estate, debts, effects, or rights of any such prisoner; and in case of the dismissal of the petition of such prisoner, all acts done before such dismissal shall be valid. § 2.

It shall be lawful for the court to appoint, at any time after the filing of a prisoner's petition, and *before* it shall adjudge him entitled to his discharge *as well as after* such adjudication, one or more assignee or assignees, for the purposes of the said act; which assignees shall have the same powers, authorities, rights, and duties, and shall be subject to all the duties, liabilities, and punishments given by this or the said act with respect to the provisional or other assignee or assignees; and in all cases after assignment by the provisional assignee, all the estate and effects of such prisoner shall be as effectually and legally vested by relation in such assignee or assignees, as if the first assignment had been made to him or them. But no act done by virtue of such first assignment shall be thereby rendered void or defeated. § 3.

If any assignees shall wilfully retain, or employ for their own benefit, any sums of money part of the estates of such insolvent, the court shall have full power to order such assignees to be charged in their accounts with interest at a rate not exceeding 20l.

*per centum per annum* on all sums of money so retained or employed by them for the time during which they shall have so retained or employed the same. § 4.

The court, or the justices acting under the authority of the said act, shall have the same power to examine into all debts in the prisoner's schedule, whether the same shall be therein stated to be *admitted* or *disputed*, or *admitted in part and disputed in part*, as is enacted by the said act as to the debts stated to be *admitted* therein; and shall also have power to inquire whether any of such debts have been improperly admitted or improperly disputed by the prisoner with a fraudulent intent. § 5.

In the adjudication of the court that any prisoner is entitled to the benefit of the act, and the order thereon, it shall not be necessary to specify the several creditors, as required by the said act; but it shall be sufficient, if the court shall think fit, to refer to the schedule of such prisoner as specifying such creditors as to whom the court shall adjudge the prisoner entitled to the benefit of the act, and to be discharged forthwith. And in all cases where it shall appear that any prisoner shall have done any act for which the court is authorized to order that such prisoner shall not be discharged by virtue of the said act, until he shall have been in custody at the suit of some one or more of the persons who were creditors at the time of petitioning the said court, or had since become creditors in respect of debts then growing due, and from whose claim he or she shall be discharged by the judgment of the said court, for a period or periods not exceeding three years in the whole, the court may adjudicate thereon in the words of the said act, without naming any such creditor or creditors in such adjudication: and thereupon the said insolvent shall be subject to be detained in prison by his then detaining creditor or creditors, and to be arrested or charged in custody by any of the other creditors in his schedule, until he shall have been in custody for such period or periods in the whole as shall be specified in such adjudication. § 6.

The court may order expences of reference to be paid out of the first proceeds, and the prisoner to attend, if required, in matters of reference: the fee to the keeper of the prisoner, or his deputy, to be ten shillings, to be paid by the parties requiring the reference: false swearing under the reference to be punished as wilful and corrupt perjury. No keeper of any prison shall be required to carry any prisoner a greater distance than two miles from his prison, to or before any officer or examiner; except that the keepers of prisons in Middlesex or London, and of the prisons of the King's Bench and Marshalsea, and in Horsemonger-Lane, and of the borough of Southwark, shall carry their prisoners before such officer at the office of the said court, or at such other place within the bills of mortality as the said court shall direct. § 7.

The court may order prisoners to be confined within the walls, if it see proper. § 8.

The justices at the quarter-sessions are empowered to remand



a prisoner who refuses to be sworn, or to answer proper questions; and the justices shall have the same power to compel the attendance of witnesses and the production of papers, as now are possessed by the superior courts at Westminster; and the clerk of the peace, who is hereby authorized to issue such subpœnas as may be requisite, in each of which the names of not more than four persons shall be inserted, for each subpœna shall receive from the person requiring the same the sum of 2s. 6d. and no more. But no witness shall be obliged to attend, unless the party on whose behalf he shall be required, shall have previously tendered an allowance for his expences. § 9.

Where any prisoner in actual custody or arrested within the counties of Middlesex or Surry, or the city of London, had, at or immediately before such arrest, his usual place of abode in some other county or place, it shall be lawful for the court to receive affidavits of any creditors or other persons not resident within the said counties or city, in opposition to the discharge of such prisoner, and to permit interrogatories to be filed for the examination of any person making or joining in such affidavit, and also to stay the discharge of such prisoner, until such interrogatories shall be fully answered, or until the expiration of six weeks from the filing of such interrogatories. § 10.

No prisoner, who shall have petitioned the court for relief under the said act shall be discharged out of custody as to any action, suit, or process, in or by which he shall be charged or detained in custody for any debt or damages, which shall be *admitted* by such prisoner in his schedule, or which shall be *disputed* therein *only as to the amount*, by virtue of any supersedeas, judgment of nonpros, or judgment as in the case of a nonsuit for want of the plaintiff in such action, &c. proceeding therein. § 11.

If any married woman, being a prisoner, shall petition to be discharged, the court may receive such petition without requiring such married woman to execute a conveyance or assignment, or warrant, according to the provisions of the said act; but, instead thereof, the court shall require such married woman to execute a conveyance and assignment for vesting in such provisional assignee as aforesaid all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition notwithstanding her coverture, or which shall be vested in any trustee or other person for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession (except her wearing apparel, bedding, and other such necessaries, not exceeding in the whole the sum of 20*l.*) and also all other real and personal estate and effects to which she shall be entitled in any manner whatsoever, in possession, remainder, or reversion, subject only to such right, title, or interest, as her husband may have therein; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any rights of her husband in such real and personal estate and effects respectively;

and she shall also execute a warrant of attorney to confess judgment in one of the superior courts aforesaid, for the amount of the debts remaining unpaid, from which she shall be discharged under the authority of the said act as aforesaid; which warrant of attorney shall be sufficient authority for entering up judgment against her, notwithstanding her coverture; but such judgment shall not in any manner prejudice or affect the rights of her husband, except that the same shall be deemed and taken to be her debt, in case she shall die in the life-time of such husband, to the end that the same may be discharged out of her personal assets in a due course of administration, or out of her real estate, if she shall have any at the time of her death, but without prejudice to any estate or interest of her husband therein as tenant by the courtesy; and in case such woman shall, during the life-time of her husband, become entitled to any property for her separate use, such judgment may be enforced against such separate property, by suit in equity, or otherwise, under the order of the said court, for the purpose of obtaining payment of so much of the debts from which such woman shall have been discharged by such court as shall then remain unpaid; and in case such woman shall survive her said husband, such judgment may after his death be enforced against such woman or her property, real and personal, in the same manner and with the same effect as it might have been if she had been sole and unmarried at the time she executed such warrant to confess judgment, and at the time when such judgment shall have been entered up as aforesaid: provided always, nevertheless, that the discharge of any married woman under the authority of the said act or of this act, shall not operate to discharge her husband from any debt from which his wife shall be so discharged: but such debt, so far as the same shall remain unpaid or unsatisfied, shall be chargeable upon and in force against such husband, as fully, to all intents and purposes, as if his wife had not obtained such discharge. § 12.

Prisoners obtaining discharge shall be discharged against any creditor for any sum payable at a future time. § 13.

If an insolvent, after his discharge, shall refuse or neglect to appear before the court, or before the justices at their sessions, when the court shall direct the matter to be re-heard before such justices, at the time specified in any rule of the said court (a copy whereof shall have been duly served on such insolvent), it shall be lawful for the court to order him to be apprehended and remanded into custody, in such prison as it shall direct, and to cause him to be brought up for examination as often as to the said court or justices shall seem fit. § 14.

If any prisoner shall have been adjudged not to be discharged, or entitled to any protection under the act, until he shall have been in custody at the suit of a certain creditor or creditors for a certain period, and the court shall see cause to believe that such adjudication has been obtained on false evidence, or otherwise fraudulently obtained or improperly made, the court may direct



such prisoner to be brought again before it, and, upon due notice given to the creditors named in the same order, to re-hear the matter, and set aside the said adjudication if they shall see cause, and make such further order as shall seem fit. § 15.

Any attorney or agent removed from the files of the court, and afterwards practising, shall be guilty of a contempt, and liable to fine and imprisonment. § 16.

All affidavits must be sworn either before the court, or a commissioner thereof, or a commissioner appointed by the court for the purpose of taking affidavits, or a master extraordinary in chancery, or a commissioner for taking affidavits in any of the superior courts of Westminster Hall, or, in Scotland or Ireland, before a magistrate of the county, division, city, town, or place. § 17.

Estates, &c. of insane persons are to be vested, on their discharge, in provisional or other assignees, the same as if they were of sound mind; and every assignment hitherto made in such case by the court shall be good and effectual; and it shall be lawful for the court to order judgment to be entered up against such prisoner, in the same manner as if he had been of sound mind, and had executed a warrant of attorney in the manner by the said act provided. § 18.

When any assignment shall be avoided by a commission of bankrupt being issued against any prisoner, no action or suit shall be commenced for any thing done by virtue of the said assignment, except to recover any property, estate, money, or effects of the said bankrupt, detained after demand thereof. § 19.

The court may invest in the public funds, &c. unclaimed money and apply the interest towards expences of the court. § 20.

After the court is built in Portugal Street, all matters are to be heard there, unless the court think proper to adjourn to any other place. The keepers of the prisons, or their deputies, shall be entitled to the sum of three shillings from each prisoner, for carrying him before the court, on the hearing of his petition and schedule. § 21.

In all rules, orders, warrants, and other proceedings of the court, it shall be sufficient to set forth such rule, order, or warrant, without setting forth the petition, conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or the schedule, balance sheet, order for hearing, adjudication, order for discharge, &c. § 22.

After the expiration of six weeks from the last day of Trinity term until the 1st of November, in every year during the continuance of the said act, the court shall have full power to regulate and appoint its sittings, at such times as to the said court shall appear fit and necessary for the due administration of justice; provided always, that no adjournment shall be at any time for more than six weeks. § 23.

In every information and indictment for omitting any property from schedule, or for aiding therein, it shall be sufficient to set out the substance of the offence charged, without setting forth the

petition, or conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or balance sheet, order for hearing, adjudication, order for discharge or remand, or any warrant, rule, order, or proceeding of or in the said court, except so much of his schedule as may be necessary for that purpose. § 24.

## ASSESSED TAXES.

### WINDOW DUTY.—4 Geo. IV. c. 11.

For every dwelling house containing not more than six windows or lights (except houses worth 5*l.* a year, and charged with the duty on inhabited houses here- £ s. *d.*  
after mentioned) the yearly sum of - - - - 0 3 3

Not more than six windows or lights, if of the value before mentioned, and charged to the said rate or duty accordingly, the yearly sum of - - - - 0 4 0

7 . . . . .	£0 10 0	25 . . . . .	£7 14 3	55 to 59	£18 13 0
8 . . . . .	0 16 6	26 . . . . .	8 2 9	60 - 64	18 17 9
9 . . . . .	1 1 0	27 . . . . .	8 11 0	65 - 69	21 0 3
10 . . . . .	1 8 0	28 . . . . .	8 18 6	70 - 74	22 2 6
11 . . . . .	1 16 3	29 . . . . .	9 8 0	75 - 79	23 5 0
12 . . . . .	2 4 9	30 . . . . .	9 16 3	80 - 84	24 7 6
13 . . . . .	2 13 3	31 . . . . .	10 4 9	85 - 89	25 10 0
14 . . . . .	3 1 9	32 . . . . .	10 13 3	90 - 94	26 12 6
15 . . . . .	3 10 0	33 . . . . .	11 1 6	95 - 99	27 14 9
16 . . . . .	3 18 6	34 . . . . .	11 10 0	100 - 109	29 8 6
17 . . . . .	4 7 0	35 . . . . .	11 18 3	110 - 119	31 13 3
18 . . . . .	4 15 3	36 . . . . .	12 6 9	120 - 129	33 18 3
19 . . . . .	5 3 9	37 . . . . .	12 15 3	130 - 139	36 3 0
20 . . . . .	5 12 3	38 . . . . .	13 3 6	140 - 149	38 8 0
21 . . . . .	6 0 6	39 . . . . .	13 12 0	150 - 159	40 12 9
22 . . . . .	6 9 0	40 to 44	14 8 9	160 - 169	42 17 9
23 . . . . .	6 17 6	45 - 49	15 14 9	170 - 179	45 2 6
24 . . . . .	7 5 9	50 - 54	17 5 0	180 -	46 11 3

And for every window above 180, 1*s.* 6*d.*

#### *Rules for charging Windows.*

1. The duties to be charged yearly upon the occupier, for one year from April the 5th, to be levied on such occupier.

2. Where any change in the occupation shall take place after the assessments, then the duties charged on the occupier shall be paid by the occupier, landlord, or owner, for the time being. But where a tenant shall quit on the termination of a lease or demise, and shall have given notice to the assessor, the duty shall be discharged for the remainder of that year.

3. Where any dwelling-house is let in different apartments, and shall be inhabited by two or more persons, the same shall be



charged as if such house were inhabited by one only; and the landlord or owner shall be deemed to be the occupier.

4. Every house whereof the keeping is left to the care of any person, shall be subject to the like duties as if it were inhabited by the owner or tenant.

5. Every window, including the frame, partitions, and divisions thereof, which by admeasurement of the whole space on the aperture of the wall of the house on the outside, shall exceed in height, twelve feet, or in breadth four feet nine inches, is chargeable as two windows, except:—1. Windows which are not more than three feet six inches in height, although above four feet nine inches in breadth. 2. Windows which were made of greater dimensions previous to the 5th of April, 1785. 3. Windows in shops, workshops; and warehouses employed solely for the purposes of trade, or as warehouses, provided no person dwells in the same. 4. Windows in the coffee-room, tap-room, or any other public room, of any house licensed to sell wine, ale, &c. And, 5. Windows or lights in farm-houses which are exempt from the inhabited house duty; as also windows in dwelling-houses not chargeable with the said duty.

6. Every window extending so far as to give light into more rooms, landings, or stories than one, shall be charged separate.

7. When a partition or a division between two or more windows fixed in one frame is of the breadth of twelve inches, the window on each side shall be charged as a distinct window.

8. All sky-lights and windows in staircases, garrets, cellars, passages, and all other parts of dwelling-houses, shall be charged.

9. Every window in any kitchen, cellar, scullery, buttery, pantry, larder, wash-house, laundry, bakehouse, brewhouse, and lodging-room, belonging to any dwelling-house, shall also be charged.

#### *Exemptions.*

1. Houses belonging to his majesty, the royal family, and public offices.

2. Hospitals, charity schools, or houses provided for the reception and relief of poor persons, except such apartments therein as are occupied by the officers or servants.

3. The windows in any room licensed for divine worship.

But every such hospital, &c. shall be brought into charge by the assessors; and the commissioners may discharge such hospital, charity-school, and house for poor persons, &c.

4. The windows or lights in any dairy or cheese room belonging to and occupied with any dwelling-house provided the windows shall be made with splines or wooden laths, or iron bars, or wires, and wholly without glass, and that the occupiers shall paint on the outer door, on the outside of the windows, in large Roman letters, the words "Dairy, or Cheese Room." And by 57 Geo. III. c. 25. one glazed window or light in every dairy in a farm-house.

5. And by 50 Geo. III. c. 104. windows in any room used wholly for the purpose of carrying on any manufacture.

6. By 57 Geo. III. c. 25. tenements which have been formerly occupied as dwelling-houses shall not be charged when used for the purposes of trade only, or as warehouses, or shops or counting-houses. § 1.

Persons claiming relief must give notice to the assessor of the place where such tenements are situate; who, on request made, shall be admitted, in the day-time, to inspect such tenements. § 2.

Mills, places of manufacture, or warehouses not attached to a dwelling-house, are not liable to the duties on houses or windows, though a servant be appointed to watch and guard the same in the night-time, provided such servant be named in a licence to be obtained from the commissioners of the district. § 4.

One window in any dairy or cheese room, whether glazed or made of splines, laths, bars, or wires, is exempted from duty. § 5.

#### *Opening or Stopping up Windows.*

Windows or lights are not to be newly opened or made; nor are windows or lights, which are stopped up at the time the assessment for the current year is made, to be re-opened; neither are windows which are charged in the assessment to be stopped up, without six days' notice given to the surveyor or inspector of the district. Nor is any abatement to be allowed for any window stopped up after the commencement of the year for which the assessment is, or ought to be made.

No window or light in any dwelling-house is to be exempted from the above duties because it is stopped up, unless it shall effectually be so stopped with stone or brick, or with the same kind of materials whereof that part of the outside walls of such dwelling-house chiefly consists, or unless it was effectually stopped up with plaster upon lath, previous to the 10th of May, 1798. Nor shall windows in the roof of such dwelling-house be exempt, unless the same be effectually stopped up with materials similar to the outside of the roof thereof.

#### *Assessors' Right of Examining Number of Windows, &c.*

Assessors have full power, at all seasonable times, to pass through any house, or go into any court or yard, and externally to view the windows and lights in such house, and the premises occupied therewith, and to measure such windows or lights externally. And where the house is divided into two distinct tenements, requiring each tenement to be separately assessed, the assessor has liberty to enter into the same, and to view, number, and measure the windows therein, as well internally as externally.

#### HOUSE DUTY.

For every inhabited house, which, with the household and other offices, yards, and gardens, therewith occu-



pied and charged, is, or shall be worth 5 <i>l.</i> and under	<i>In the Pound</i>
20 <i>l.</i> rent by the year, the yearly sum of - - -	0 1 6
20 <i>l.</i> and under 40 <i>l.</i> rent by the year the sum of -	0 2 3
40 <i>l.</i> rent by the year and upwards - - - - -	0 2 10

*Rules for charging the Duties.*

1. The duties to be charged on the occupier of every inhabited dwelling-house, with the household and other offices, yards and gardens, therewith occupied, to the full and just yearly rent at which the same is worth to be let, whether such occupier shall or shall not be entitled to be discharged therefrom in respect of window-duty on houses not having six windows.

2. In charging these duties, every coach-house, stable, brew-house, wash-house, laundry, wood-house, bake-house, dairy, and all other offices, and all yards, courts, and curtilages, gardens, and pleasure-grounds, occupied with any dwelling-house, are to be valued together with such dwelling-house, provided no more than one acre of such gardens and pleasure-grounds shall be so valued.

3. All shops or warehouses attached to, or having any communication with the dwelling-house are to be valued together with the dwelling-house and offices; but such warehouses and buildings upon, or near to wharfs, are not subject to these duties, although the wharfingers or their servants have dwelling-houses on such wharfs.

4. Neither are such warehouses as are distinct and separate buildings, and not parts of the dwelling-house or shop, but used solely for lodging of goods or carrying on some manufacture, although the same may adjoin to, or have a communication with the house or shop.

5. Dwelling-houses divided into different tenements to be assessed separately to these duties.

6. That every dwelling-house, together with the premises described in Rule 2. may be charged to the full and just yearly rent at which the same is really worth to be let. No dwelling-house, with such premises, is to be rated at less than the full annual value at which the same is charged in the last poor-rate; but if such poor-rate shall have been made throughout by a pound-rate on the full annual value of all the houses, then the assessment is to be made according to the said rate. But if the poor-rate is not made on the full annual value, nor according to any proportionate part thereof, then the assessment is to be made on the actual rent at which such dwelling-house, with the premises herein-before mentioned, shall have been let within the last three years.

7. And in all cases where the above rules are not applicable, the assessment is to be made on the full annual value, or the actual amount of the rent at which such dwelling-house and the premises herein-before mentioned, are let, or, if not let, the annual rent at which they are worth to be let.

*Exemptions from the said Duties.*

1. Houses belonging to his Majesty, or any of the Royal Fa-

mily, and every public office, for which the duties heretofore payable have been paid by his Majesty, or out of the public revenue.

2. Every dwelling-house, being a farm-house, occupied by a tenant, and *bona fide* used for the purpose of husbandry only.

3. Every dwelling-house, being a farm-house, occupied by the owner thereof, and *bona fide* used for the purpose of husbandry only, which, together with the household and other offices aforesaid, shall be valued under this act at ten pounds per annum, or any less sum.

4. Any hospital, charity-school, or house provided for the reception or relief of poor persons.

5. Every house whereof the keeping is left to the care of any person or servant who does not pay rates to the church and poor, and who resides therein for the purpose only of taking care thereof. But an assessment shall be duly made in every such case, and the fact truly returned as in other cases of exemption, and the exemption allowed by the commissioners.

### MALE SERVANTS,

*In or out of Livery.*

For 1 Servant . . .	£1 4 0	For 7 Servants . . .	£18 7 6
2 do. . . . .	3 2 0	8 do. . . . .	22 8 0
3 do. . . . .	5 14 0	9 do. . . . .	27 9 0
4 do. . . . .	8 14 0	10 do. . . . .	33 5 0
5 do. . . . .	12 5 0	11 do. . . . .	42 1 6
6 do. . . . .	15 9 0		

And an additional 3*l.* 16*s.* 6*d.* for every other servant.

Servant employed by any male person, never having been married, the further sum of . . . . . 1 0 0

The duties on male servants are to be charged for every gardener who shall have contracted for the keeping of any garden wherein the constant labour of one person shall be necessary, or where the person is constantly employed therein, but occasional gardeners are exempt

For every male traveller, or rider,\* employed by any merchant or trader . . . . . 1 10 0

And where more than one is so employed, there shall be charged for each . . . . . 2 10 0

For every male clerk, book-keeper, or office-keeper, overseer or clerk to ditto (except apprentices, with whom no fee or less than 20*l.* has been paid) . . . 1 0 0

Where more than one is employed, for each . . . . . 1 10 0

For every male person employed as a steward, bailiff, overseer, or manager, or clerk under a steward, bailiff, overseer, or manager . . . . . 1 0 0

\* Traders who employ persons to travel from place to place on foot, are exempted by the 59 Geo. III. c. 118. for every male person so employed above the number of four.



For every male shopman, warehouseman, or porter, (except apprentices aforesaid), whether in a wholesale or retail shop or warehouse . . . . .	£1 0 0
And for every male person so employed, where the duty by the former act shall not be chargeable (see 52 Geo. III. c. 93.) . . . . .	1 0 0
For every male servant employed as a waiter (except occasional waiters over and above the ordinary number usually kept) in any tavern, inn, &c. . . . .	1 10 0
If employed as an occasional waiter for six calendar months in one year . . . . .	1 0 0
For a less period . . . . .	0 10 0
If employed as such six times within the year . . . . .	0 10 0
Every male person (not being a servant) employed as an occasional waiter in any <i>private house</i> , not less than six times within the year . . . . .	0 10 0
For every male servant kept by a stable-keeper to take care of race horses, whereby the stable-keeper may gain a livelihood or profit . . . . .	1 0 0

*Servants let to Hire.*

For every coachman, postillion, groom, or helper, kept to be let out to hire for less than a year, and in such manner that the duty payable on horses let to hire shall not be paid by the innkeeper, postmaster, &c. or by the coachmaker, or other person . . . . . <i>annual</i>	1 5 0
And for every coachman kept for the purpose of driving any stage coach, and for every guard . . . . .	1 5 0

The said duty to be paid by the persons letting the same to hire; but if the persons hiring the same shall not make a return thereof; then the progressive duty payable on servants shall be chargeable in respect of every such servant on the person hiring and making default, according to the number of servants retained by him; and he shall also forfeit for such default 5*l*.

*Exemptions from the Duties on male Servants.*

Male Servants employed in any trade, manufacture, or calling, or in husbandry, to earn a livelihood or profit, and not in any capacity already chargeable.

Butlers, manciples, cooks, gardeners, or porters, employed by any of the Royal Family, in either university, or in the colleges of Westminster, Eton, or Winchester.

Christ's Hospital, St. Bartholomew's, Guy's, St. Thomas's, Bridewell, Bethlem, and the Foundling.

In the navy, all officers below the rank of master and commander, in actual employ; and in the army, all officers below those holding the rank, or receiving the pay of a field officer, shall be exempted from paying the duty for a servant who is actually a soldier or a sailor in the same regiment or ship.

The duties are not to be payable for any person retained or

employed in the room of others, who may be called out under any act for training and exercising a military force, during the time of such training and exercising.

Also, officers on half-pay, from the navy, army, or marines, (disabled), keeping only one servant, are exempt.

### TAX ON DOGS.

For every greyhound . . . . .	£1 0 0
For every hound, pointer, setting-dog, spaniel, lurcher, or terrier . . . . .	0 14 0
For a single dog, of any other species, kept by or for the use of any person inhabiting a dwelling-house assessed to any of the duties on houses or windows . . . . .	0 8 0
Those who keep two or more dogs, of whatever denomination, for each dog . . . . .	0 14 0
Composition for hounds, per annum . . . . .	36 0 0

Whelps under six months old are exempt

Persons not paying king's taxes may keep one dog, if not a greyhound, hound, &c.

### PLEASURE HORSES,

*Used either for riding, or drawing Carriages.*

For 1 such horse	£1 8 9	11 horses . . . . .	total £34 18 6
2 . . . . .	4 14 6	12 . . . . .	38 2 0
3 . . . . .	7 16 9	13 . . . . .	41 8 9
4 . . . . .	11 0 0	14 . . . . .	44 12 6
5 . . . . .	13 18 9	15 . . . . .	47 16 3
6 . . . . .	17 8 0	16 . . . . .	51 0 0
7 . . . . .	20 18 3	17 . . . . .	54 8 0
8 . . . . .	23 18 0	18 . . . . .	58 1 0
9 . . . . .	27 6 9	19 . . . . .	61 15 0
10 . . . . .	31 15 0	20 . . . . .	66 0 0

And an additional 3*l.* 6*s.* for every other horse.

Horses let to hire for less than a year, in any manner so that the stamp-office duty, payable on horses let to hire, shall not be payable, the sum of . . . . .

Race horses . . . . .	1 8 9
Horses or mules for labour, thirteen hands high . . . . .	0 10 6
ditto, not thirteen hands high . . . . .	0 1 6

But horses used in husbandry, or drawing any carriage not liable to duty, or carrying burdens in the course of the trade or occupation of the person to whom such horse shall belong, if rode only when going for a load, or returning, or going for medical assistance, or to or from any market, or place of public worship, election of members of parliament, or to or from any court of justice, or to or from any meeting of commissioners of taxes, are exempt.



OTHER HORSES, &c.

Waggoners' and carriers' horses . . . . .	£0 10 6
Butcher,* for one horse used wholly in his trade . . . . .	1 8 9
But for a second horse . . . . .	0 10 6
Horses not exceeding thirteen hands high, used for riding or drawing any carriage . . . . .	1 1 0
(But former exemptions are to continue.)	
One horse employed by any bailiff upon the concern of any farms he may be entrusted with . . . . .	1 5 0

*By the 1 & 2 Geo IV. c. 110. it is enacted, that from and after the 5th of April, 1822, the several duties on persons in respect of mares, geldings, or mules, kept and used solely for the purpose of husbandry in Great Britain, and all assessments thereon, shall severally cease and determine.*

*And it is further enacted, that from and after the 5th of April, 1821, the duties on mules shall cease and determine in respect of all and every the person or persons who shall seek his, or her, or their livelihood by the carriage or conveyance of ore, slate, stone, or coal or culm, to or from the mine or pit, or by the carriage of lime, sea-sand, sea-weed, or other manure; provided that such ore, slate, or stone, or coal or culm, sea-sand, sea-weed, or other manure, be loaded on the backs of such mule, and not otherwise.*

CARRIAGES WITH FOUR WHEELS.

For 1 Carriage . . . . .	£6 0 0	For 6 Carriages . . . . .	£49 4 0
2 do. . . . .	13 0 0	7 do. . . . .	59 10 0
3 do. . . . .	21 0 0	8 do. . . . .	70 8 0
4 do. . . . .	30 0 0	9 do. . . . .	81 13 6
5 do. . . . .	39 7 6		

And an additional 9l. 1s. 6d. for every other carriage.

For every additional body successively used on the same carriage or number of wheels . . . . .	3 3 0
Four-wheel carriages, let to hire for less than twenty-eight days, and post chaises, if duly entered as such with the commissioners of stamps . . . . .	5 5 0
If not entered . . . . .	6 0 0

CARRIAGES WITH TWO WHEELS.

When kept for a person's use, or let out to hire, and drawn by one horse . . . . .	£3 5 0
Drawn by two or more horses . . . . .	4 10 0
For every additional body, successively used on the carriage or number of wheels . . . . .	1 11 6

\* By the 1 & 2 Geo. IV. § 37. no butcher is to be deprived of any exemption for or on account of one horse to be used by him or his servants solely for the purpose of trade, to which he would have been entitled under any act or acts relating to assessed taxes in force previous to the 59 Geo. III. c. 13.

## TAXED CARTS.

By the 4 Geo. IV. c. 11. the duty on taxed carts is repealed, and also so much of the act is repealed as requires that the same shall have the words, "A Taxed Cart," and the owner's christian and surname, and place of abode, and the name and place of abode of the maker, and the full value, and the actual price of consideration paid or given for the same, painted on a black ground in white letters, or on a white ground in black letters, on the outside of the back pannel or back part of such carriage, in words at full length, and in Roman characters, each of the letters being at least one inch in length, and of a breadth in proportion; but they must nevertheless be still built and constructed wholly of wood and iron, without any covering other than a tilted covering, and without any lining, and with a fixed seat without slings or braces, and without any ornament, other than paint of a dark colour, for the preservation of the wood or iron only; and it shall be lawful for any person or persons keeping and using any horse, mare, gelding, or mule, *bona fide* for the purposes of husbandry, to use any such in drawing any carriage of the description of a taxed cart, the duty whereon is repealed by this act, and kept by any such person for his own use, free of any duty chargeable under the said acts, in respect of any such horse, mare, gelding, or mule.

*Exemptions from the Duty on Carriages.*

Coaches licensed by the commissioners for hackney coaches within the cities of London and Westminster.

Carriages kept by any coachmaker or maker of carriages, *bona fide* for sale, or for the purpose of being lent to any person during the time such person's carriage of the same description shall be under repair, and never employed for his own use, or let to hire, or otherwise lent than as aforesaid. Any common stage cart, kept truly and without fraud, to be used wholly in the affairs of husbandry, or in the carriage of goods in the course of trade, and whereon the name and place of residence of the owner, and the words "Common Stage Cart," shall be legibly painted, although the owner, or his or her servant, shall or may, for the purpose of driving or conducting the same only, occasionally ride therein or thereon when laden or when returning from the place to which, or when going to any place from which any load shall have been or shall be to be carried in such cart in the course of husbandry or trade; or which shall be used for conveying the owners thereof or their families to or from any place of divine worship on Sunday, Christmas-Day, or Good-Friday, or on any day of a public fast or thanksgiving; or for carrying persons going to or returning from the elections of members to serve in parliament; in case such carriage shall not have been or be used for any other purpose of riding thereon or therein, save as aforesaid, or shall not have been or be let to hire for any of such purposes of riding therein or thereon.



HORSE-DEALERS.

Every person who shall use and exercise the trade and business of a horse-dealer within London and Westminster, and the liberties of the same respectively, the parishes of St. Mary-le-bone and St. Pancras, the weekly bills of mortality, or the borough of Southwark, in the county of Surrey, the annual duty of £25 0 0

Every person who shall use the trade or business in any other part of Great Britain . . . . . 12 10 0

Horse-dealers are to deliver a list of such horses as they keep for riding or drawing.

COACH-MAKERS, &c.

Persons carrying on the trade, annually . . . . . £0 10 0

Each carriage with four wheels, built for sale . . . . . 1 5 0

Ditto with two wheels . . . . . 0 12 6

Taxed Cart . . . . . 0 3 0

The above duties are also payable by persons *selling* any such carriage, &c. by auction or commission.

HAIR POWDER.

Wearing hair powder, each person, annually . . . . . £1 3 6

But payment for two unmarried daughters will exempt the rest

*Exemptions.*

Any of the Royal Family, and any menial servants of his Majesty, or any of the Royal Family.

Any officer in actual employ in the navy, under the rank of commander, or any officer holding commission in the navy under the said rank, who shall be employed on the establishment of Greenwich, or any subaltern or non-commissioned officer or private in the army, artillery, militia, marines, or corps of engineers, or any person enrolled and actually serving in any volunteer corps, whether of infantry or cavalry.

Any clergyman who shall not be possessed of an annual income of 100*l.* or upwards, whether arising from ecclesiastical preferment or otherwise; any preacher of any congregation of Dissenters, or any person dissenting from the church of England, in holy orders, or pretended holy orders, entitled to the benefit of the several Toleration acts in favour of the Dissenters and Papists, and who shall not be possessed of an annual income of 100*l.* or upwards, however arising; and the income arising from benefices shall be estimated on the average amount, computed on seven years next preceding.

ARMORIAL BEARINGS.

Every person chargeable for any carriage . . . . . £2 8 0

Without a carriage, but paying house duties . . . . . 1 4 0

Every other person . . . . . 0 12 0

## GAME.

Certificate for taking or killing any game whatever, or woodcock, snipe, quail, landrail, or coney . . . . .	£3 13 6
Game-keeper . . . . .	1 5 0

## COMPOSITION FOR THE ASSESSED TAXES.

By 59 Geo. III. c. 51. it is enacted, that the *assessments* made for the year ending on the 5th of April, 1819, shall *remain to the same amount*, in respect of all persons who shall compound for the annual payment thereof, for the term of three years, to commence from the said 5th day of April, 1819, upon the terms and conditions hereinafter mentioned; and it shall be lawful for the commissioners acting in the execution of the Assessed-Tax Acts, for any county, city, town, or place, in Great Britain, or any two or more of them, to contract and agree with any person who is assessed for the said year ended on the 5th day of April, 1819, and who shall apply to them for that purpose, in the same division in which such assessment hath been made, for the composition of his assessed taxes for the said period of three years; and all persons assessed for the year ended as aforesaid are hereby respectively declared to be competent to enter into composition with the said respective commissioners for their assessed taxes, for the term of three years, to commence from the said 5th day of April *on the same amount annually*, as shall have been assessed upon them for the year ended as aforesaid, together with an *additional annual rate of one shilling* for every *twenty shillings* of the amount so assessed, except the duty in respect of killing game.

§ 1, 2.

The compositions on the house and window duties are to be made separately and distinctly from all the other duties. § 2.

Compositions will entitle the persons compounding to *open additional windows* and to *keep additional articles free of duty*, of the same description as those before charged, and will exempt from the provisions and assessments of Assessed-Tax Acts; except when chargeable for another dwelling-house, or for articles of a different description. § 3.

Provided that no composition shall be entered into with any person who shall have become chargeable in the present year by reason of any different or additional establishment set up within the year ending on the 5th day of April, 1819, to a greater amount of duty than hath been charged on him in the said last year's assessment, without including as well the amount of duty so charged in the said assessment, as the increased amount of duty so becoming chargeable by reason of such different or additional establishment, nor in any such case where a *bona fide* return of such different or increased establishment shall not be made before the 1st day of July, 1819. § 4.

No person shall be chargeable under the acts in force at the



time of passing this act, after the expiration of the said term of three years, for any part of the increased establishment not included in the composition entered into under this act, who shall give six months previous notice of his intention to discontinue the same, and who shall actually have ceased to keep the same one calendar month prior to the expiration of the said period of three years. § 5.

When an establishment shall have consisted in part of articles whereon a less duty hath been made payable by any act in the present session of parliament, it shall be lawful to enter into compositions under this act, on the amount of duty charged on other articles on the said last assessment, together with the amount of duty so made chargeable by the said act of the present session of parliament. § 6.

Every composition entered into under this act, in respect of the duties charged on a dwelling-house, from which the persons or person entering into the same shall remove during the term herein limited, shall cease and determine on the 5th day of April next after such removal; and every composition entered into under this act, in respect of any other of the duties granted by the said acts, with any person who within the said term herein limited shall die, or become bankrupt or insolvent, or shall assign his goods, chattels, or effects, shall also cease and determine on the 1st day of April next after such death, bankruptcy, insolvency, or assignment. § 7.

Compositions shall bind the party to the punctual payment of the amount. § 8.

Parties removing, and the executors and assignees of persons dying, or becoming bankrupt or insolvent, shall be answerable for the compositions at the end of the year. § 9.

The composition moneys shall be payable quarterly in the same manner as the assessed taxes; provided always, that every person so compounding, the amount of whose annual composition shall not be less than twenty pounds, may agree with the respective commissioners aforesaid for the payment of his composition money into the Bank of England, or to the receiver-general, or his lawful deputy, for the county or division where his composition money shall be payable, by half-yearly instalments, at the times and in the manner prescribed in this act; and all such half-yearly payments shall be made in equal portions on or before the first day of October and the first day of April in each year; and with respect to payments to be made to the receiver-general or his deputy, to require a receipt acknowledging such payments, at the cost and charge of the persons making such payments: and in every such case the said receiver-general, or his deputy as aforesaid, shall give the said person a receipt as aforesaid, specifying therein the name of the person compounding as aforesaid, and the parish or place mentioned in the certificate of composition; which receipts shall be delivered over to the collectors, or one of them, of the parish or place where the assessment referred to by the cer-

tificate of composition shall have been made, by an indorsement under the hand of the person so compounding and paying, and shall be received by such collectors or collector as cash, and allowed as such by every receiver-general or his deputy, in his accounts with such collector. § 10.

The Bank shall open an account with the commissioners of the treasury: and the cashier of the Bank, who shall receive any money tendered to him in payment of not less than one moiety of the money annually payable on any composition, shall enter the same in the book to be provided for that purpose; and the said cashier shall give the person paying the same a certificate of such payment, specifying therein the number of half-yearly instalments thereby discharged, and referring therein to the names or name of the persons or person so compounding, and the county and division mentioned in the certificate of composition then produced: provided always, that it shall be lawful for any person so authorized as aforesaid, to pay in advance to the governor and company of the Bank of England, or to their cashiers, any sum of money compounded for as aforesaid, and payable for the term of one whole year, and to require a certificate acknowledging such payment; and it shall be lawful for the cashiers, on production of the certificate of composition at the time of payment of the said duty in advance (all sums then payable on such composition for any former year or instalment being first satisfied), to make an allowance out of the sum so paid in advance, at the rate of *three pounds per centum per annum*; and all such certificates made out by the cashiers as aforesaid, being indorsed and delivered by the person so compounding to the collectors, or one of them, of the parish or place where the assessment shall have been made, shall be received by them as cash in satisfaction of the condition of such certificate, and allowed to them in their accounts with the receiver-general and his deputy as aforesaid. § 11.

The assessors of assessed taxes shall deliver the prescribed notices to all parties assessed in the last year; together with forms to be used in applications to compound. Persons desirous to compound may send their applications to the clerks of the commissioners, who are to summon the commissioners to take the applications into consideration. § 12.

The surveyors shall examine the assessments for the last year on persons applying to compound, and their returns for the present year: and if such surveyor shall find that any person who shall have applied to compound, hath removed from the dwelling-house charged in the last assessment, or hath returned any additional establishment as chargeable for the present year, so as to increase the amount of his assessment for the present year beyond the amount charged in the preceding year, or hath not made any return, or hath made an undue return for the present year, it shall be lawful for the said surveyor to certify the same to the said commissioners with his objections; and no composition shall be entered into in respect of the dwelling-house from which the



person applying to compound hath removed ; nor with any person who hath not made a due return of all articles, matters, and things chargeable upon him for the present year ; and in case such due return shall have been made, then no such composition shall be entered into, without adding to the amount of the last year's assessment the additional establishment chargeable in the present year, and calculating the additional rate payable under this act on such aggregate amount. § 13.

Upon every composition entered into after the 1st day of October, 1819, there shall be paid one moiety of the annual amount, within ten days after the date of the certificate ; and no such composition shall be entered into after the 31st day of the same month, nor after the person applying for the same shall have received a notice of an increased charge : nor after any appeal from the amount of the first assessment charged on the person so applying to compound, for the present year. § 14.

Upon all applications to compound under this act, which shall not be objected to by the surveyor as aforesaid, the clerks to the commissioners shall prepare the certificates of composition to be signed by the commissioners and parties compounding. § 15.

All assessments to cease on persons compounding, except as before excepted. § 19.

On compositions not duly paid at the times prescribed, collectors may distrain for their money in arrear, with 1s. in the pound for their own use, and all costs and charges. § 19.

By the 1 and 2 Geo. IV. c. 113. persons who shall renew their compositions, entered into under former acts, are allowed to keep and use free of duty, after the renewal of their compositions, whatever articles they may have set up under their former compositions, the same not being of a different description than those included in their former compositions. Persons who have not taken the benefit of former acts, but shall compound under the new act, will be entitled to the like privileges as under former acts, except that no person who shall compound on any carriage with two wheels, and not on any carriage with four wheels, will be entitled to set up, keep, or use any carriage with four wheels free of duty ; also, that no person who shall compound for any dog or dogs, other than hounds, can set up, or keep free of duty any hound, or hounds, nor can any person who shall compound for any less number of hounds than ten, set up, or keep free of duty, any additional number of hounds.

Under the new act, no composition can be entered into or renewed with any person in trade in respect of any articles kept for the purpose of trade, nor can any composition be entered into or renewed with two or more persons in partnership in trade, nor upon any carriages, horses, or other articles let, or used to hire, the assessors are therefore to take care that assessments be made on such persons for articles kept by them as aforesaid.

Persons who shall have compounded for their establishments must have the notice papers, No. 2. A. left with them, as they

may use articles not compounded for, or not allowed by the new composition act, to be included in their contracts. The duties which persons cannot compound for are those in schedules C. No. 3 and 4. D. No. 3, 5, and 6. E. No. 2. F. No. 1 and 2. H. and L. of 48 Geo. III. cap. 55, and 52nd Geo. III. cap. 93, and the carriages described in the 58th Geo. III. cap. 17.

*And it is provided by the 4 Geo. IV. c. 11. § 3, that the commissioners of districts are to reduce so much of the duties compounded for as are repealed by this act, and to cause the reduced amounts to be inserted in the assessments of composition, and these contracts are to be in force for recovering payments of the reduced instalments.*

This act recites that whereas by the 1 and 2 Geo. IV. c. 113. intituled "*An act to continue several acts for the relief of persons compounding for assessed taxes from an annual assessment, for a further term; and to amend the acts relating to assessments and compositions of assessed taxes,*" persons therein described, who had compounded for the said duties under the acts therein recited, were authorized to continue their former compositions for a further term; and persons therein also described, who had not so compounded, were authorized to compound for the term and in the manner in the said act prescribed, and on the conditions therein contained; provided that such persons respectively should give notices of their intentions so to continue their compositions, or to compound on or before the 5th April, 1822, in the manner by the said act prescribed; and whereas it is expedient to enlarge the period for compounding under the said act, and to grant relief in certain cases hereinafter described: it is therefore enacted, that in every case wherein the respective surveyors acting in the execution of the said act shall, after the 5th April, 1822, and before the passing of this act, have received, and in every case wherein the said respective surveyors, from and after the passing of this act, and before the 1st September, 1822, shall receive any notice or offer to compound or to continue any former composition authorized by the said act except as hereinafter is excepted, it shall be lawful for the said surveyors diligently to inquire into and examine such notices, and to certify their assent thereto, at any time within thirty days after the delivery thereof respectively; and it shall be lawful for the respective commissioners acting in the execution of the said act, and they are hereby authorized and required to enter into composition with such person or persons respectively, subject to the rules and regulations, and according to the provisions of the said act and of this act, to all intents and purposes, as if the said notices had been delivered within the time limited by the said first-mentioned act; provided the certificates of such compositions respectively shall be executed by the said commissioners, and the party so compounding, on or before the 5th of October, 1822; and provided that the compositions authorized to be entered into under this act shall not extend to any case mentioned in the said act, other than to renewed compositions; and such compositions as are authorized to be made on the



amount of assessments mentioned in the said act, except where otherwise varied by the provisions of this act; and which certificates of compositions, when executed by the said commissioners, or any two or more of them, and by the party aforesaid, in the manner by the said act directed, shall be of the like force and effect, and subject to the like powers and conditions for payment, to all intents, as if the said compositions had been entered into under the directions of the said act. § 1.

And whereas a power is given in and by the said first-mentioned act to persons therein described, who had compounded for any of the duties of assessed taxes in the said act enumerated, other than the duties on houses and windows, to renew his or her former composition on such establishments for the further time therein limited, in respect of the particular articles allowed to be compounded for under the said act, on payment to the same amount in respect of such articles, and a further duty granted by the said act of one shilling for every twenty shillings of the aggregate amount of such former composition; and whereas it is expedient to relieve from the said additional duty of one shilling, persons who have not at any time during the period of their former compositions increased their establishment, upon which they so first compounded, so as to have become chargeable with a greater aggregate amount of duty than the amount compounded for, such claims of exemption being made and allowed in the manner hereinafter provided; and it is further enacted, that if any person or persons who have given, or who shall give notice of renewing his, her, or their former compositions under the provisions of the said recited act, or of this act, shall not have increased his, her, or their establishment since entering into such first composition, whereby such person or persons have not become or are liable to be charged with a greater amount of duty for the whole of the articles chargeable than the duty so compounded for, it shall and may be lawful for him, her, or them, to claim the exemption from the said additional duty granted by the said act, upon giving notice in writing of such his, her, or their intention to the surveyor of the said duties acting for the district in which such person or persons shall reside, according to the form in the schedule to this act annexed, on or before the 1st Sept. 1822; and all such notices shall and may be retained in the hands of the said surveyor respectively, until the expiration of thirty days after the delivery thereof; and every such surveyor shall carefully and diligently examine the same, and from time to time, within the said period of thirty days, deliver the same to, and therewith certify to the said respective commissioners, his satisfaction with, or his objections to the said notices delivered in such cases; and in case the surveyor shall object to any such claim, he is hereby required to give notice thereof in writing to the respective commissioners, and his objections thereto shall, in pursuance of such notice, be heard upon appeal before the said respective commissioners, subject to such rules and regulations as appeals are directed to be heard and

determined under by the several acts relating to the assessed taxes. § 2.

And in all claims to be allowed by the said respective commissioners acting in the execution of the said acts and of this act, in the cases herein provided, it shall be lawful for the said commissioners, and they are hereby authorized and required, to contract with the said persons, under the said recited act, for a renewal, of his, her, or their composition, exclusive of the said additional duty by the said act granted; and where any claim shall be made and allowed under this act, upon any contract made and entered into before the passing thereof, it shall be lawful for any two of the said respective commissioners, and they are hereby required, to certify under their hands every such allowance on the back of such contract, without erasing the said additional duty from the body thereof; and all and every such contracts so indorsed shall be as valid and effectual for enforcing the same to the amount of the reduced consideration and instalments by virtue of such indorsement, to all intents, as if the said contracts had been originally entered into without including therein the said additional or further duty. § 3.

And whereas by the 56 Geo. III. c. 66. intituled, "*An act for reducing the duties payable on horses used for the purposes therein mentioned for two years, and for repealing the acts granting allowances in respect of children*, relief was granted to the occupiers of farms at less than two hundred pounds per annum, from the former duties on horses used for the purposes of husbandry, and in lieu of which duties certain reduced duties were substituted for the period therein limited; and it was therein provided, that any person chargeable to the said reduced duties should, during the continuance of the said act, be exempted from the duties payable under the said several acts, in respect of one such horse, mare, or gelding, used occasionally for the purposes of riding thereon: and whereas the provisions of the said act were extended by subsequent acts, and by an act passed in the last session of parliament, intituled, "*An act for repealing the duties imposed on husbandry horses, and to make perpetual several acts for reducing the duties on certain horses and mules*," the duties on husbandry horses granted by the said former acts were wholly repealed, but the said exemption was not extended beyond the period of continuance of the said reduced duties: and whereas it is expedient to continue the said exemption for the same term mentioned in the said act for the continuance of the said reduced duties: it is therefore enacted, that from and after the 5th of April, 1822, for the term of five years then next following, any person occupying a farm as tenant at rack rent, the rent of which shall be less than two hundred pounds a year, and making a livelihood solely thereby, or any person occupying any estate on any other tenure than as tenant at rack rent solely on such estate, together with a farm at rack rent, the value of which in the whole shall be less than equivalent to a farm at the rack rent of two hundred pounds



a year, (reckoning the value of every estate occupied by the owner thereof, or on any tenure other than as tenant at rack rent, as equivalent to double the amount of the like farm at rack rent,) and making a livelihood solely by such his own estate, or by such estate and farm jointly, shall be exempt from the duty payable under the said acts for one horse, mare, or gelding *bona fide* kept and usually employed for the purpose of husbandry on his said estate or farm, although used occasionally for the purpose of riding; such being claimed and allowed in like manner as is directed by the acts relating to assessed taxes, in other cases of exemption from the said duty. § 4.

And from and after the 5th of April, 1822, any persons occupying a farm of less value than two hundred pounds *per annum*, in the cases of exemptions last hereinbefore described, and making a livelihood solely thereby, and from the profits of letting and use hereinafter mentioned, shall be exempt from the duty chargeable by the said recited acts, in respect of any horses, mares, or geldings *bona fide* kept for the occupation of his, her, or their farm, although any such horses, mares, or geldings shall be occasionally let on hire, or used in drawing for hire or profit, by such person or persons, for any other purposes than of drawing any carriage chargeable with duty in respect of such horses or carriages, or of letting the same to hire. § 5.

And whereas persons removing from their respective dwelling-houses at any time within the year ending the 5th of April, 1822, and occupying other dwelling-houses to which they have not been assessed for that year, are required to deliver statements of the number of windows, and the value of the said dwelling-houses, at which the same were respectively chargeable, in order to an assessment for the year commencing the 5th of April, 1822, on the amount whereof the persons therein described are respectively authorized to compound under the said first-mentioned act; and whereas doubts have arisen as to the time at which such statements were intended by the said act to be delivered, and the windows to be comprised therein; it is further enacted, that the windows to be returned in each such statement were intended by the said last mentioned act to be, and shall be, the same number on which an assessment hath been made, or might or ought to have been made thereon, if the same had been then occupied for the year ending on the 5th of April, 1822, according to the laws relating to assessed taxes in force at the time of making the said act; and in all cases where any statement hath been delivered before the passing of this act, containing a less number of windows than were chargeable on the dwelling-house mentioned therein on the 6th of April, 1821, a new statement shall be delivered within two calendar months after the passing of this act, conformable to the declaration and enactment before mentioned; and it shall be lawful for any person or persons before described, whether such statements have been before delivered or not, to deliver such statements within the said period, according to which

assessments shall be made on the number of windows comprized therein; and all contracts of composition made or to be made contrary to this act, shall be void and of no effect; provided, that the commissioners who may have already executed any contract of composition upon statements delivered contrary to this act, may amend the same without executing new contracts, by indorsing thereon the number of additional windows, duty, and per-centage, on every such contract. § 6.

And it shall be lawful for every person competent to renew his, her, or their composition, or to compound under the said recited act or this act, to include in such composition renewed or entered into respectively, the duty in respect of any clerk, or of any steward, bailiff, overseer, or manager, or of any male person described in the schedule of the 52 Geo. III. and in the said act mentioned, marked (C.) No. 3. such male person being occasionally employed in any of the capacities enumerated in the schedule to the said act marked (C.) No. 1. as in the said schedule No. 3. is described: provided nevertheless, that the composition of any such person so renewing his, her, or their former composition, or compounding, shall contain the duty for one such servant chargeable in the said schedule marked (C.) No. 1. and it shall be lawful for the respective commissioners to include such respective articles herein allowed, or any of them, in such composition respectively, on the same terms as if the said articles had been originally allowed to be compounded for by the said act; and in cases where contracts shall have been entered into before the passing of this act, it shall be lawful for the said respective commissioners, and they are hereby authorized, to amend the same, by causing the amount of composition for any of the articles aforesaid to be certified by indorsement on such contract, under the hands of any two of such commissioners; and the sum so charged and added to the amount of the said composition in and by such certificate, and to the assessment thereof, shall and may be levied and recovered by the same instalments, and in like manner, as the amount of composition inserted in the body of such contract, and in addition thereto. § 7.

And if any person, during the continuance of his composition under the said act, or this act, shall, by reason of any employment in the public service, in the execution of any office, military, naval, or civil, be required and ordered to reside out of the United Kingdom, and such person shall give notice thereof to the surveyor of the district in which such composition shall be entered into, every such composition shall cease and determine on the 5th of April next after such notice and the time of such absence and removal from the said United Kingdom, on payment of all arrears due on such contract up to the said 5th of April; and the commissioners for the affairs of taxes shall cause the discontinuance of such contract to be certified to the commissioners of the district in which it was made: provided, that nothing herein contained shall exempt any such person from his or their



liability to assessment under the acts relating to the assessed taxes for any year or years commencing from the 5th of April last aforesaid, in respect of all or any part of his establishment continued to be kept and employed in the said United Kingdom for any part of his family, or from his liability to assessment under the the said acts, from and after the 5th of April next following the discontinuance of such employment in the public service, and his returning to and residing in the United Kingdom, to all intents, as if such composition had not been entered into. § 8.

The commissioners and other officers appointed to execute the former acts are to execute this act. § 9.

*SCHEDULE to which this act refers.*

NOTICE to be used by persons not having increased their establishment under former compositions, and claiming, on renewal, exemption from the additional duty of five pounds per centum.

To \_\_\_\_\_ Surveyor, acting for the parish of \_\_\_\_\_ in the division  
of \_\_\_\_\_ in the county of \_\_\_\_\_ and to the Commissioners  
acting for the said division.

TAKE Notice, That I am [or we are] desirous of renewing former Composition for Assessed Taxes under the powers, conditions and provisions of two acts, passed in the second and third years in the reign of King George the Fourth; and that \_\_\_\_\_ do hereby declare, that \_\_\_\_\_ have not, at any time during the period of \_\_\_\_\_ composition, entered into with the Commissioners of the division of \_\_\_\_\_ in the county of \_\_\_\_\_ become chargeable on a greater aggregate amount of duty, for the whole of the articles comprised in such composition, than the amount of duty compounded for, whereby \_\_\_\_\_ hereby claim exemption, on such renewal, from the additional duty of five pounds per centum by the said acts granted; and that \_\_\_\_\_ will attend to execute and receive the contract of \_\_\_\_\_ composition, when required by the said Commissioners.

Signed the \_\_\_\_\_ day of \_\_\_\_\_ 182 \_\_\_\_\_

Witness,  
(Assessor or Collector of the said Parish.)

METROPOLIS POLICE, 3 Geo. IV. c. 55.

This act recites, that whereas it is expedient that the provisions of an act made in the last session of parliament, intituled, "*An act for the more effectual administration of the office of a justice of the peace in and near the metropolis, and for the more effectual prevention of depredations on the river Thames and its vicinity, for one year,*" should be continued and amended; it is therefore enacted, that the several police offices now established in the parishes of St. Margaret Westminster, St. James Westminster, St. Mary-le-bone, St. Andrew Holborn, St. Leonard Shoreditch, St. Mary Whitechapel, and St. John Wapping, in the county of Middlesex, and St. Saviour, in the county of Surrey, shall be continued; and that the several persons heretofore appointed to execute the duties of a justice of the peace at the police offices now established under the said recited act, shall continue to execute the same at the said eight police offices, together with such other justices of the peace for the said counties respectively as

may think proper to attend thereat ; and that it shall be lawful for his majesty, his heirs and successors, upon every vacancy, by death or otherwise, to appoint another fit person, being a justice of the peace of the said counties of Middlesex and Surrey respectively, to execute the duties of a justice of the peace at the said several police offices, in lieu of the person making such vacancy. § 1.

And it is further enacted, that one or more of the said justices so appointed shall diligently attend at each of the said police offices every day, from ten o'clock in the morning until eight of the clock in the evening and at such other times and places as shall be found necessary and directed by one of his majesty's principal secretaries of state ; and that two of the said justices shall in like manner attend together at each of the said offices from twelve of the clock at noon until three in the afternoon : provided always, that no such attendance shall be given on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, unless in cases of urgent necessity, or when it shall be directed by such principal secretary of state. § 2.

The present receiver to be continued in office ; and in case of death, his majesty may appoint another ; and the receiver for the time being shall receive all fees, penalties, and forfeitures, and other sums of money applicable to the purposes of this act, and shall keep an exact and particular account of all such monies as shall be received by him, and shall apply the same quarterly in discharge of the salaries, expences, and charges attending the said police offices, and in carrying this act into execution ; and shall make all such contracts and disbursements as shall be necessary for purchasing, hiring, fitting up, and furnishing proper and sufficient houses and buildings wherein the said eight police offices shall be held, in such manner, as his majesty, his heirs and successors, by and with the advice and consent of his or their privy council, shall think proper to direct and appoint ; of which houses and buildings so to be hired or purchased, and of all houses and buildings already hired or purchased for the like purposes, and of the fixtures and furniture thereof, and of all other necessaries to be held or purchased for the purposes of this act, the property acquired therein shall be vested in the receiver for the time being, who shall and may sell, assign, and dispose of the same or any part thereof, under the like directions and appointment, as occasion shall require ; and such receiver shall prepare proper plans and estimates of all such contracts and disbursements as shall be necessary for the purposes aforesaid, and shall deliver the same to one of his majesty's principal secretaries of state ; and such receiver shall further do and execute all such other lawful matters and things towards the establishment of the said eight police offices, and towards the carrying this act into execution, as his majesty, his heirs and successors, by and with the advice of his or their privy council, shall from time to time think proper to direct. § 3.



And it is further enacted, that the justices appointed aforesaid, or any two of them, in their respective offices, shall appoint, retain, and employ a sufficient number of fit and able men, subject to the approbation of one of his majesty's principal secretaries of state, whom they are hereby authorized and empowered to swear in to act as constables, for preserving the peace and preventing robberies and other felonies, and apprehending offenders against the peace; which constables so sworn, shall, within the counties of Middlesex, Surrey, Essex, and Kent, have all such powers, authorities, privileges, and advantages as any constable duly appointed now has, or hereafter may have by virtue of any law or statute now made or hereafter to be made; and shall obey all such lawful commands as they shall from time to time receive from the said justices respectively, for the apprehending offenders, or otherwise conducting themselves in the execution of their offices; and such justices may at any time suspend or dismiss from his employment any such constable attached to their respective offices, whom they shall think remiss or negligent in the execution of his duty, or otherwise unfit for the same; and when any such constable shall be so dismissed, or cease to belong to any of the said offices, all powers and authorities vested in him as a constable under and by virtue of this act shall immediately cease and determine, to all intents and purposes whatever. § 4.

And it is further enacted, that the justices appointed to the said police office in the parish of St. John Wapping, commonly called the Thames Police Office, or any two of them, shall (subject to such approbation as aforesaid) appoint, retain, and employ any number of fit, and discreet men, not exceeding thirty, who, under the name of Thames Police Surveyors, shall (being first duly sworn in manner above mentioned) have, within the counties aforesaid, the powers, authorities, privileges, and advantages of a constable as aforesaid; and shall direct and inspect the conduct of the constables attached to the Thames Police Office, and of all persons to be employed in and about ships and vessels in the said river Thames, or in or on the several creeks, wharfs, quays, and landing places thereto adjacent, and (subject to the orders of the said last-mentioned justices) shall have power by virtue of their offices to enter at all times, as well by night as by day, into and upon every ship, hoy, barge, lighter, boat, or other vessel (not being then actually employed in his majesty's service) lying or being in the said river or creeks, and into every part of every such vessel, for the purpose of inspecting, and upon occasion directing the conduct of any constable who may be stationed on board of any vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any vessel, in or about the lading and unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention in all cases of any felonies or misde-

meanors being committed, and for the effectual detection of any felonies or misdemeanors which may have been committed, or which such surveyor may have reasonable cause to suspect to have been committed on board any such vessel; and the justices appointed to the said Thames Police Office, may at any time suspend or dismiss any such Thames Police surveyor whom they shall find remiss or negligent in the execution of his duty, or otherwise unfit for the same; and when any such surveyor shall be so dismissed, or cease to belong to the said office, all powers and authorities vested in him as such surveyor under and by virtue of this act, shall immediately cease and determine to all intents and purposes whatever. § 5.

Justices are to be allowed a salary of 600*l.* per annum; and such further sums are to be issued for payment of clerks, constables, &c. and for Bow-street Office, and horse and foot patrol; provided, that the whole of the charges shall not exceed the annual sum of 68,000*l.* over and above the necessary disbursements for purchasing, hiring, repairing, fitting up, and furnishing the houses and buildings wherein the said offices shall be held; and the receiver, out of the monies issued to him, shall and may pay to the constables and surveyors so appointed as aforesaid, for their trouble and attendance, such sum as may from time to time appear reasonable to one of his majesty's principal secretaries of state, and any extraordinary expences they shall appear to have been necessarily put to in apprehending offenders and executing the orders of the justices acting under and by virtue of this act; such extraordinary expences being first examined and approved of by the justices attending the police office to which such constables shall be respectively attached; and such further sum for rewarding the extraordinary diligence or exertion of any of the said constables or surveyors, and for compensating them for wounds or severe injuries received in the performance of their duties, and for an allowance to such of them as shall be completely disabled by bodily injury received, or shall be worn out by length of service, as shall be directed by such principal secretary of state. § 6.

And it is further enacted, that no justice of the peace for the county of Middlesex, county of Surrey, city and liberty of Westminster, or liberty of the Tower of London, or his clerk, or any person on their behalf, elsewhere than at the said police offices, shall directly or indirectly, upon any pretence or under any colour whatever, take or receive any fee, reward, gratuity, or recompence, for any act by him or them done or to be done in the execution of his or their office or employ, as justice of the peace, or clerk as aforesaid, within the limits of the weekly bills of mortality, or within the parishes of St. Mary-le-bone, Paddington, St. Pancras, Kensington, and St. Luke Chelsea, in the said county of Middlesex, upon pain of forfeiting the sum of one hundred pounds for every such offence, one moiety thereof to the said receiver, to be applied to the purposes of this act, and the other moiety thereof, with full costs of suit, to the person who shall



sue for the same : provided, that nothing in this act contained shall be construed to extend to any fees taken at any general or quarter sessions of the peace, or at any meeting of justices for the purpose of licensing alehouses, or to any fees taken at the said public office in Bow-street, or to any fees taken by the vestry clerk of any parish for the purpose of enforcing the payment of any taxes or assessments arising within the same parish, or for the purpose of hearing and determining any offence cognizable before justices of the peace, by virtue of any statute made and provided for the special regulation or government of such parish. § 7.

Tables of fees are to be hung up in each office : and it shall be lawful for any justice at such offices respectively to refuse to do any act for which any fee shall be demandable, unless such fee shall be first paid ; and that if any such act shall be done, and the fee due thereon shall not be paid, it shall be lawful for any justice of the peace to summon the person from whom such fee shall be due, and to make order for payment of the same, with the costs of the proceedings, and in default of payment to levy the same, with the costs of the distress, by warrant under his hand and seal. § 8.

The account of fees and forfeitures received at the police offices shall be delivered quarterly to the receiver, and the amount thereof paid to him. § 9.

And all penalties (except to informers or parties aggrieved) recovered at the police offices, shall be paid to the receiver. § 10.

If fees and penalties are not accounted for, the receiver may sue for the same in any court of record. § 11.

The receiver may sue for money in the hands of deceased receivers, and recover from executors. § 12.

The receiver shall, every three months, and oftener if required, deliver to the lord high treasurer, or the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, for the time being, a full and particular account of all monies by him received and paid as aforesaid, with vouchers for the same ; which account shall be verified upon oath, before some justice or baron of one of his majesty's courts of record at Westminster ; and such receiver, for his care and pains in the execution of such office, shall and may retain to his own use, out of the monies so received by him as aforesaid, a sum not exceeding £400. § 13.

And it is further enacted, that no justice appointed as aforesaid shall, during his continuance in such appointment, be capable of being elected, or of sitting as a member of the House of Commons ; and that no justice, receiver, surveyor, or constable, appointed by virtue of this act, shall, during the time that he shall continue in his office respectively, or within six months after he shall have quitted the same, be capable of giving his vote for the election of a member to serve in parliament for the counties of Middlesex or Surrey, or for the city and liberty of Westminster,

or the borough of Southwark respectively ; nor shall, by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to be a member to serve in parliament for the said counties, city, or borough ; and every such justice, receiver, surveyor, or constable, offending therein, shall forfeit the sum of 100*l.* one moiety thereof to the informer, and the other moiety thereof to the use of the poor of the parish or place where such offence shall be committed ; such action to be brought within the space of one year after such offence committed ; provided nevertheless, that nothing in this act shall extend to subject any such justice, receiver, surveyor, or constable, to any penalty for any act done by him at or concerning any of the said elections, in the discharge of his duty in the said respective capacities. § 14.

Acts directed to be done by a justice where an offence is committed, may be done by a justice in the next police office. § 15.

His majesty in council may alter the situation of the offices.

And whereas divers fairs are held within the city and vicinity of London, by charter or prescription, and other fairs without any lawful authority, which leads to scenes of riot, disorder, debauchery, and crime, and it is expedient to regulate such fairs as are legally held, and to suppress such as have no lawful origin : it is therefore enacted, that at all fairs held within ten miles of Temple Bar, all business and amusements of all kinds shall cease at the hour of eleven in the evening, and not recommence earlier than the hour of six in the morning ; and that if any house, shop, room, booth, standing, tent, caravan, waggon, or other place, shall, during the continuance of any such fair as aforesaid, be open within the hours hereinbefore prohibited, for any purpose of business or amusement, in the place where such fair shall be held, or within three hundred yards thereof, then it shall be lawful for any constable or other peace officer, within his jurisdiction, to take into custody the master or mistress, or other person having the care, government, or management of any such house, shop, room, booth, standing, tent, caravan, waggon, or other place, and also every person being therein, and who shall not quit the same forthwith upon being bidden by any such constable or other peace officer so to do, and to convey every such person so taken, as soon as conveniently may be, before a justice of the peace, who shall proceed to hear the complaint in a summary way ; and every person convicted before any such justice, as the master, mistress, or person having the care, government, or management of any such house, shop, room, booth, standing, tent, caravan, waggon, or other place, shall forfeit and pay the sum of five pounds ; and every person so convicted as having been therein, and not quitted the same forthwith upon being bidden by a constable or other peace officer so to do, shall forfeit and pay the sum of forty shillings ; and if the party so convicted shall not immediately pay the penalty, the justice shall commit him or her to hard labour in the house of correction for any space



of time not exceeding three months, nor less than six days, unless the penalty shall be sooner paid. And if there shall appear to any two justices, within their respective jurisdictions, reason to believe that any fair usually held within the distance aforesaid has been held without charter, prescription, or other lawful authority, or that any fair lawfully held within the said distance has been usually held, for a longer period than is warranted by charter, prescription, or other lawful authority, it shall be competent to them to summon the owner or occupier of the ground upon which such fair is usually held, to appear before such justices as may be present at some petty sessions, to be held at the time and place to be specified in the summons, not less than eight days after the service of the summons, to show his right and title to hold such fair, or to hold such fair beyond a given period, (as the case may be); and if such owner or occupier shall not attend in pursuance of such summons, or shall not shew to the justices present at such petty sessions sufficient cause to believe that such fair has been held by lawful right and title, for the whole period during which the same has been usually held, such justices shall declare, in writing, such fair to be unlawful, either altogether or beyond a stated period (as the case may be), and shall give notice of such their declaration, by affixing copies thereof on the parish church, and on the most public places in and near the ground where such fair has been usually held; and if, after such notices shall have been affixed for the space of six days, any attempt shall be made to hold such fair, if it shall be declared altogether unlawful, or to hold it beyond the prescribed period, if it shall be declared unlawful beyond a certain period, any justice of the peace within his jurisdiction may, by his warrant, direct any constable or other peace officer to remove every booth, standing, and tent, and every carriage, of whatsoever kind, conveyed to or being upon such ground for the purpose of holding or continuing such fair, and to take into custody every person erecting, pitching, or fixing, or assisting to erect, pitch, or fix, any such booth, standing, or tent, and every person driving, accompanying, or conveyed in every such carriage, and every person resorting to such ground with any exhibitions, shows, swings, roundabouts, whirligigs, or other instruments of gambling or amusement, and to carry every person so taken before the justice granting such warrant, or before some other justice, who shall proceed to hear the complaint in a summary way; and every person convicted before any such justice of any of the offences last aforesaid, shall forfeit and pay any sum not exceeding 10*l.* nor less than 20*s.*; and if the party so convicted shall not immediately pay the penalty, the justice shall commit him or her to hard labour in the house of correction, for any space of time not exceeding three months, nor less than six days, unless the penalty shall be sooner paid: provided nevertheless, that if the owner or occupier of the ground whereon any such fair has been usually held, shall, when summoned before the justices at their petty sessions as aforesaid, enter

into a recognizance in the penal sum of 200*l.* (which recognizance such justices are hereby authorized to take), with condition to appear in the court of King's Bench on the first day of the then next term, and to answer to any information in the nature of a *quo warranto*, which his majesty's attorney or solicitor general may exhibit against such owner or occupier, touching the right and title to such fair, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, which costs the said court is hereby authorized to award, then notwithstanding the justices shall declare such fair to be unlawful, they shall forbear from giving notice of such their declaration, and from taking any further measures thereon, until judgment shall be given by the said court against the right and title to such fair; and the justices taking such recognizance shall forthwith transmit the same to one of his majesty's principal secretaries of state, to the end that the same may be filed in the said court, and such further directions may be given thereon as to such secretary of state may seem fit and necessary. § 17.

And whereas it hath become a practice of late to open shops or rooms for the sale or under the pretence of selling ready-made coffee, tea, and other liquors, and to keep such shops or rooms open during the whole or the greatest part of the night, thereby affording shelter and accommodation to thieves, prostitutes, and other disorderly persons, and tending greatly to the encouragement of robberies, and to the concealment of stolen property; it is therefore enacted, that no shop, room, or place for the purpose aforesaid, within the city of London or the liberties thereof, within the limits of the weekly bills of mortality, or within any of the parishes hereinbefore mentioned, shall be kept open after the hour of eleven at night during any part of the year, nor opened before the hour of four in the morning, between Lady-day and Michaelmas, or before six in the morning between Michaelmas and Lady-day; and if any such shop, room, or place, shall be open within the hours hereinbefore prohibited, or being shut up, if any person shall during those hours be found therein, except the persons actually dwelling there, or having lawful excuse for being there, then the master, mistress, waiter, or other person having the care, government, or management of such shop, room, or place, whether he or she be the real owner or keeper thereof or not, shall forfeit and pay any sum not exceeding 10*l.* nor less than 20*s.* upon conviction of any such offence before any justice of the peace, by confession or upon the oath of one or more credible witness or witnesses; and if the party so convicted shall not immediately pay the said penalty, the justice shall commit him or her to hard labour in the house of correction, for any space of time not exceeding three months, nor less than six days, unless the said penalty shall be sooner paid; and the said penalty, when paid, shall be distributed, one moiety to the informer, and the other moiety to the chamberlain of the city of London, if the offence be committed in the said city, and if out of the said city,









‘*title of this act*], convict him the said A.B. of the said offence, and adjudge him to be a rogue and vagabond, within the intent and meaning of the statute made in the same year, intituled, “*An act for consolidating into one act, and amending the laws relating to idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, in England;*” and that he, for his said offence, be committed to the house of correction at \_\_\_\_\_ until the next general [*or quarter, as the case may be*] sessions of the peace to be holden for the said county, [*city, or place, as the case may be*] then and there to be further dealt with according to law. [*If the party be committed for a less time than until the sessions, then say,* there to remain for the space of \_\_\_\_\_.] Given under my hand and seal, the day and year first above written.’ § 22.

Conviction not to be quashed for want of form, or removeable by certiorari; but in all cases where the penalty shall exceed the sum of 5*l.* or one month’s imprisonment, if any person shall think himself aggrieved by such conviction, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county or city wherein the cause of complaint shall have arisen, such person at the time of his conviction entering into a recognizance with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions assembled; and in case any such conviction of a reputed thief shall be affirmed at such sessions, the said justices may adjudge the offender to be a rogue and vagabond, and proceed against him or her in the same manner as they might have done if such rogue and vagabond had been committed to the house of correction until such general or quarter sessions; and in case such offender shall not appear pursuant to the said recognizance, the person so convicted by such justice shall be deemed an incorrigible rogue, within the intent and meaning of the said last-recited act; and the justices at such sessions, or any two of them, shall issue their warrant to apprehend and commit the person so deemed an incorrigible rogue to some house of correction or common gaol within their jurisdiction, there to remain until the next general or quarter sessions for the said county, city, or liberty, as the case may be, then and there to be further dealt with according to law. § 23.

And whereas by an act of the 21 Geo. III. c. 67. intituled, “*An act to prevent the mischiefs that arise from driving cattle within the cities of London and Westminster, and liberties thereof, and bills of mortality, a penalty not exceeding 20*s.* nor less than 5*s.* is imposed on every person, not being hired or employed to drive cattle, who pelts with stones or brickbats, or by any other means drives or hunts away, or sets any dog or dogs at any ox, heifer, cow, steer, or other cattle, without the consent of the owner of the same, or his servant: and whereas the said penalty has been found insuffi-*

cient to deter evil-disposed persons from the practice of hunting bullocks : it is further enacted, that if any person shall pelt, drive, or hunt, or set any dog or dogs at any ox, heifer, cow, or steer, contrary to the provisions of the said last-recited act, such person shall, upon being convicted thereof according to the same act, forfeit and pay, on the first conviction, any sum not exceeding 40*s.* nor less than 20*s.* and on the second and every future conviction, any sum not exceeding 5*l.* nor less than 50*s.* to the person or persons who shall prosecute such offender to conviction, and in default of payment shall be committed to the house of correction, there to be kept to hard labour for any time not exceeding two months on the first conviction, nor five months on the second and every future conviction, in the manner prescribed by the last-recited act. § 24.

The officers and patrols of Bow-street Office may act as constables within the counties of Middlesex, Surrey, Essex, and Kent, upon being duly sworn in by the chief magistrate of that office.

And it is further enacted, for the purpose of ensuring competency and fidelity in the watchmen and patrols employed by the aldermen and common council of the city of London, and the vestries and other parochial and local authorities within the limits of the weekly bills of mortality and the parishes hereinbefore mentioned, when any case of incompetency, negligence, misconduct, or delinquency shall appear to any two justices of the peace acting within the said city or limits and parishes, against any such watchman or patrol, it shall be lawful for the said two justices, by writing under their hands and seals, to declare the same, and to pronounce the man so found incompetent or guilty of such negligence, misconduct, or delinquency, to be either suspended for a limited time, or absolutely dismissed from his office, as they shall think proper, and to give notice of such suspension or dismissal to the alderman and common council of the ward, if in the city of London, or to the vestry or other authority by whom such watchman or patrol was appointed, if elsewhere ; and every such watchman or patrol shall be incapable of being re-appointed, either for the same or any other ward, parish, or place, while such suspension or dismissal shall remain in force ; and if no watchman or patrol shall be appointed by the alderman and common council of the ward, or by the vestry or other proper authority at their next meeting after such notice shall be delivered to the deputy of the ward, or to the clerk or secretary of such vestry, or other proper authority, or left at the house or office where their business is usually transacted, the said justices shall appoint a successor, who shall exercise and enjoy the said duties and powers, and receive the same pay, emolument, and allowances, as if regularly appointed. § 26.

No man shall hereafter be appointed within the limits and parishes aforesaid, by any authority whatsoever, to be a watchman or patrol, who shall be above the age of forty years, unless he



shall have been previously, and up to the time of such appointment, employed in the said horse or foot patrol. § 27.

And it is further enacted, that it shall be lawful for the aldermen and common council of the respective wards in the city of London and liberties thereof, to make such allowance to superannuated watchmen, beadles, or patrols, as they shall think proper, to be paid out of the watch rate to be raised in such wards respectively. § 28.

And for the better administration of the police within the limits and parishes aforesaid, it shall be lawful for the constable or headborough attending at any watchhouse within those limits and parishes, between the hours of eight in the afternoon and six in the forenoon, to take bail by recognizance, without any fee or reward, from any person who shall be brought into his custody within the said hours without the warrant of a justice, charged with any petty misdemeanor, if such constable shall deem it prudent to take such bail for the appearance of such person before the justices at the said public office in Bow-street, or at one of the said police offices, to be specified in the recognizance, for examination, at the hour of ten in the forenoon next after such recognizance shall be taken, unless that hour shall fall on a Sunday, or one of the days of absence allowed by this act, and in that case at the like hour on the succeeding day; and that every recognizance so to be taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before one of his majesty's justices of the peace; and the constable or headborough shall enter in a book to be kept for that purpose in every watchhouse, the names, residence, and occupation of the party and his sureties entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable or headborough, and shall return the same to the next general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained, and the clerk of the peace shall make the like estreats and schedules of every such recognizance as of recognizances forfeited in the sessions of the peace; and if the party not appearing shall apply, by any person on his behalf, to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint; and when the matter shall be heard and determined, either by the dismissal of the complaint, or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance

for the party's appearance before the justices shall be discharged without fee or reward. § 29.

And if any person shall wilfully destroy or damage, or endeavour to destroy or damage, or be wilfully concerned in destroying or damaging, or endeavouring to destroy or damage, any boat belonging to or hired or employed by or by the authority of the justices appointed to attend at the Thames Police Office, or any part of the sails, oars, or other tackle, stores, goods, or furniture contained in or belonging to any such boat, every person so offending shall forfeit and pay for every boat so destroyed or damaged, or attempted to be destroyed or damaged, or of which any of the tackle or other contents shall have been so destroyed or damaged, or attempted to be destroyed or damaged, any sum not exceeding 30*l.* or shall suffer imprisonment for any time not exceeding three months, over and above any such damages as may be recoverable by action at law against any such offender. § 30.

And it is further enacted, that it shall be lawful for every such Thames Police surveyor (subject to the orders of the said justices appointed to attend the Thames Police Office), having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, hoy, barge, lighter, boat, or other vessel, lying or being in the said river, docks, or creeks, to enter at all times, as well by night as by day, into and upon every such ship, hoy, barge, lighter, boat, or other vessel, and therein to take all necessary measures for the effectual prevention or detection of all felonies which he has just cause to suspect to have been or to be about to be committed in and upon the said river, docks, or creeks, and to apprehend and detain all persons suspected of being concerned in such felonies, and also all property so suspected to be stolen, and the same to produce before some justice, to be dealt with according to law. § 31.

And it is further enacted, that it shall be lawful for every such Thames Police surveyor, at any time between sun-rising and sun-setting, to enter any ship or vessel (except his majesty's ships) in the said river, docks, and creeks, and to search the same for unlawful quantities of gunpowder, and also to exercise the same powers of seizing, removing to proper places, and detaining all such unlawful quantities of gunpowder found on board any such ship or vessel, and the barrels or other packages in which such gunpowder shall be, as are given to persons searching for unlawful quantities of gunpowder under a warrant of a justice, by virtue of 12 Geo. III. c. 61. intituled, "*An act to regulate the making, keeping, and carriage of gunpowder within Great Britain, and to repeal the laws heretofore made for any of those purposes.*" § 32.

Where boats are suspected to have any naval stores, stolen ropes, &c. on board, they may be detained, and the persons suspected of having conveyed the stolen articles on board may be taken before a justice, &c. § 33.

And if on information given on oath it shall appear to any jus-



tice that there is reasonable cause for suspecting that any such articles as aforesaid, after having been so stolen or unlawfully obtained, are concealed or otherwise lodged in any dwelling-house, warehouse, yard, garden, or any other place, it shall be lawful for such justice, by special warrant under his hand and seal, directed to any Thames Police constable or surveyor as aforesaid, or other constable within his jurisdiction, to cause every such place to be searched at any time of the day, or by night, if power for that purpose be especially given in and by such warrant; and the said justice, if it shall appear to him necessary, may moreover empower such constable or surveyor, with any such assistance as to the said justice may appear, or by such constable or surveyor may be found necessary (such constable or surveyor having previously made known such his authority), to use force for the effecting such entry, whether by breaking open doors or otherwise: and if upon search thereupon made any such suspected article shall be found, then to convey the same forthwith to and before a justice, or to guard the same on the spot while the offenders are taken before a justice, or otherwise dispose thereof in some place of safety, subject to the orders of a justice in manner above mentioned; and moreover to apprehend and convey before the said justice the person or persons in whose house, lodging, or other place, the same shall so have been found, as also every other person found in such house, lodging, or place, who shall appear to have been privy to the depositing of such article in such place, knowing or having reasonable cause to suspect the same to have been stolen or otherwise unlawfully obtained; and if such persons respectively shall not immediately, or within some reasonable time to be assigned by the justice, make it appear to the satisfaction of the justice by what lawful means such article or articles came to be deposited or situated in such place as aforesaid, without any default on the part of such persons respectively, then and in such case the person or persons in whose house, lodging, or other place any such suspected article was found, and also every other person so appearing to have been privy to the depositing thereof, knowing or having cause to suspect the same to have been stolen, or otherwise unlawfully obtained, shall be deemed and adjudged guilty of a misdemeanor, and shall suffer as hereinafter mentioned. § 34.

And if any person, on being so produced before any justice to give an account of any articles seized and detained, in any of the cases aforesaid, shall declare himself or herself to have bought, received, or otherwise obtained such articles of some other person, such justice is hereby authorized and required to examine every such other person, and also every other prior purchaser or pretended purchaser; and if upon the whole evidence it shall appear to such justice, that the party suspected, or the party upon whom such articles were found, or the person so produced, or such prior purchaser or pretended purchaser, or any of them, at the time of his or her receiving such articles into his or her

possession, did believe or had reasonable cause to believe that such articles, or any part thereof, were at any time and by any person unlawfully come by or obtained, it shall be lawful for such justice to adjudge such party to be guilty of a misdemeanor, and the party so convicted shall thereupon suffer as hereinafter mentioned. § 35.

And for the more effectual prevention of accidents by fire and other mischiefs upon the said river, it is further enacted, that if any master or commander, or other officer of any ship or vessel (except his majesty's ships), shall, while such ship or vessel shall lie or be in the said river between Westminster Bridge and Blackwall, keep any gun on board such ship or vessel shotted or loaded with ball, or cause or permit to be fired or discharged any gun on board such ship or vessel, before sun-rising or after sun-setting, such master, commander, or other officer shall, for every such gun so kept shotted or loaded, forfeit the sum of 5*s.* and for every gun so fired or discharged, the sum of 10*s.* and if any master, commander, or other officer of any such ship or vessel, or any other person on board of the same, or any person on board of any barge, lighter, boat, or other craft or vessel, shall, while such ship, barge, lighter, boat, craft, or vessel shall lie or be in the said river between Westminster Bridge and Blackwall, heat or melt, or cause or permit to be heated or melted, by fire, loggerheat shot, or any other means, on board any ship, barge, lighter, boat, craft, or vessel whatever, any pitch, tar, rosin, grease, tallow, oil, or other combustible matter, every person so offending shall for every such offence forfeit any sum not exceeding 5*l.* and any one of the justices appointed to attend at the Thames Police Office, or any other justice within his jurisdiction, is hereby authorized and required, upon any information exhibited or complaint made in that behalf, within ten days next after any such offence shall have been committed, to summon the party accused, and also the witnesses on either side, or after oath made of the commission of any of the facts above mentioned by one or more credible witness or witnesses, to issue a warrant to apprehend the party accused, and upon the party's appearance, or contempt in not appearing (upon the proof of notice given), such justice shall proceed to the examination of the witness or witnesses on oath, and upon due proof thereof, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses, to give judgment or sentence; and in case the party accused shall be convicted of such offence, it shall and may be lawful for such justice to commit such offender to prison, there to remain for any time not exceeding the space of two months, unless the penalty shall be sooner paid; and if any person shall find himself aggrieved by the judgment of any such justice, he may appeal to the next court of general or quarter sessions for the county or city where such offence shall have been committed, on giving immediate notice of such appeal, and finding sufficient security, to the satisfaction of such justice, for prosecuting such appeal with effect,



and for abiding the determination of the court therein ; and the said court are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the matter, and, in case the judgment shall be affirmed, to award the person appealing to pay such costs occasioned by such appeal as shall seem mete ; and one moiety of all money recovered on account of every such penalty shall be distributed, at the discretion of the justice making the conviction, to such person or persons as he shall judge to have been instrumental in detecting and prosecuting the offender. § 36.

And it is further enacted, that every person who, for the purpose of protecting or preventing any goods, wares, merchandize, or other articles whatsoever from being seized, on suspicion of their being stolen or otherwise unlawfully obtained, or preventing the same from being produced or made to serve as evidence of or concerning any felony or misdemeanor, shall frame or cause to be framed, or be anywise concerned in framing or causing to be framed any bill of parcels containing any false statement in regard to the name or abode of any alleged vender, the quantity or quality of any goods, the place from whence, or the conveyance by which the same were furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels knowing the same to have been fraudulently framed, shall be adjudged guilty of a misdemeanor, and shall suffer as herein-after mentioned ; and may moreover, at the discretion of any justice in whose jurisdiction such offence shall be committed, be published and advertised as a fabricator of false bills of parcels, or as a convicted or reported receiver of goods stolen or otherwise unlawfully obtained, as the case may be. § 37.

And whereas, for the purpose of increasing the facility of depredations, it hath been a common practice among persons concerned in the landing and warehousing of merchandize from on board ships and vessels in the said river, wilfully to injure and promote the opening and breaking of casks, bags, and other packages, and the spilling of their contents : for remedy thereof, it is further enacted, that if any person employed in the loading, landing, or warehousing of any goods, or any other person, shall wilfully, or through culpable negligence or carelessness, cause or suffer, or be concerned in causing or suffering to be broken, bruised, pierced, started, cut, torn, or otherwise injured, any cask, box, chest, bag, or other package, contained or being designed and prepared for containing any goods while on board of any barge, lighter, or other craft lying or being in the said river, or any dock, creek, quay, wharf, or landing place adjacent to the same, or in or in the way to or from any warehouse to or from which such package shall have been removed, shall be removing, or about to be removed, with intent that the contents of such package, or any part thereof, may be spilled or dropped from such package, every person so offending shall for every such

offence be deemed and adjudged guilty of misdemeanor, and shall suffer as hereinafter mentioned. § 38.

And if, for the purpose of preventing the seizure or discovery of any materials, furniture, stores, or merchandize belonging to or having been part of the cargo of any ship or vessel lying in the said river or the docks or creeks adjacent thereto, or of any other articles unlawfully obtained from any such ship or vessel, any such or any other article shall be wilfully let fall or thrown into the river, or in any other manner directly or purposely conveyed away or endeavoured to be conveyed away from any ship, boat, barge, lighter, craft, wharf, quay, or other landing-place, every person being party, privy, or accessory to such letting-fall, throwing, or conveyance, or to any previous instructions or premeditated design so to let fall, throw, or convey away any such article with any such purpose as aforesaid, shall be deemed and adjudged guilty of a misdemeanor; and every Thames Police surveyor, or constable or other peace officer within his jurisdiction, shall apprehend and detain every such person, and forthwith convey him or her before some justice, and shall also seize and detain any boat in which such person shall be found, or out of which any such article shall be so let fall, thrown, or conveyed away; and upon the conviction of such person, such boat, with her tackle, apparel, furniture, and loading, shall be forfeited and disposed of as is hereinafter directed. § 39.

And it is further enacted, that for every offence hereinbefore declared to be a misdemeanor, or for which no special penalty is hereinbefore appointed, the offender shall, at the discretion of the justice before whom the conviction shall take place, either forfeit and pay any sum not exceeding 5*l.* or suffer imprisonment for any time not exceeding two months, in any gaol or house of correction within the jurisdiction of such justice; and in case of the adjudication of a pecuniary penalty, and non-payment thereof, it shall be lawful for such justice to commit the offender to any gaol or house of correction for the like term, unless such penalty shall be sooner paid; and one moiety of every such pecuniary penalty shall be paid to such receiver as aforesaid for the purposes of this act, and the other moiety thereof, under the direction of the justice by whom the same shall have been adjudged, shall either be paid and applied to the use of the informer alone, or be distributed between such persons as shall have contributed to the conviction of the offender, in such shares and proportions as such justice shall think fit; and that when any articles shall be seized by virtue of this act, and the person in whose possession the same shall have been found shall be convicted of a misdemeanor as aforesaid, it shall be lawful for the justice before whom the conviction shall take place, to cause such articles to be advertised in some public newspaper, to the end that persons having a right thereto may claim and receive the same within thirty days from the date of such advertisement, in the manner and upon the conditions directed in and by an act of the second year of his late



majesty's reign, intituled, "*An act to prevent the committing of thefts and frauds by persons navigating bum-boats and other boats upon the river Thames;*" and if no person shall prove his property and right to the said articles within the said thirty days, the same shall be sold for the best price that can reasonably be gotten for the same; and after deducting the charges according to the said recited act, the residue of the produce thereof shall be paid to the receiver for the purposes of this act. § 40.

And it is further enacted, that in every case in which complaint shall be made of any offence by this act declared to be a misdemeanor, or for which any pecuniary penalty is hereinbefore appointed, with or without imprisonment, in addition thereto or in lieu thereof, the matter of such complaint, if the offence shall have been committed, or the offender apprehended within the jurisdiction of the city of London, may be heard and determined by the lord mayor, recorder, or one of the aldermen of the said city, and not elsewhere: but if the offence shall have been committed, or the offender apprehended out of the said jurisdiction, such complaint may be heard and determined, either by one of the justices appointed to the Thames Police Office as aforesaid, or by any other justice within whose jurisdiction the offence shall have been committed, or the offender apprehended; and every conviction thereupon had, shall be certified, filed, and entered in such manner as is directed in and by the said act of the second year of his late majesty's reign, with respect to convictions under that act, and may also be drawn up in such form and manner, *mutatis mutandis*, as is appointed in and by the same act; and neither such conviction, nor any proceeding previous thereto, shall be removed by *certiorari* or otherwise, into any court of record, but such conviction shall be final and conclusive to all intents and purposes whatsoever. § 41.

And whereas the punishment for misdemeanors provided in and by the said act of the second year of his late majesty's reign, hath been found insufficient for the preventing of such offences: it is enacted, that every person who shall be guilty of any of the offences respectively made and declared to be misdemeanors in and by the said act, may be punished at the discretion of the justice or justices by or before whom the offender shall be convicted, either with the punishment appointed in and by the said act, or by such other punishment as is hereby appointed for, and in cases of offences declared to be misdemeanors in and by this present act; and that all the powers and provisions of the said last-recited act, respecting the obstruction of its execution, and the commencement and prosecutions of actions against justices, and their officers acting thereunder, shall extend to all things done, and to all persons acting under this act, as fully as if the same powers and provisions were herein repeated and re-enacted. § 42.

And it is further enacted, that in all cases in which it is directed by the said last-recited act, that any boat with her tackle and appurtenances, which shall be forfeited, shall be burnt and de-

stroyed, it shall be lawful for any justice before whom any person shall have been convicted of any offence, whereby any boat is or should be adjudged to be forfeited under this act, and also for any justice by whom any boat shall be adjudged to be forfeited under this act, to direct such boat, with her tackle and appurtenances, either to be burnt and destroyed, or to be restored to the owners thereof, or to be publicly sold, and the produce of such sale to be applied in like manner as other forfeitures under this act. § 43.

And whereas disputes frequently arise between bargemen, lightermen, watermen, ballastmen, coal-whippers, coal-porters, sailors, lumpers, riggers, shipwrights, caulkers, and other labourers who work for hire in or upon the said river, and the docks, creeks, wharfs, quays, and places adjacent, respecting wages or money due to them for work, and the owners, masters, or commanders of vessels and their agents, and the owners, wharfingers, or occupiers of such wharfs or quays, and their agents and other persons employing such labourers; it is further enacted, that all differences, complaints, and disputes which shall happen and arise between any bargemen, lightermen, watermen, ballastmen, (except Trinity ballastmen), coal-whippers, coal-porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers who work for hire in or upon the said river, or the docks, creeks, wharfs, quays, or places adjacent, and the owners, masters, or commanders of vessels or agents on the said river, or the docks or creeks thereto adjoining, or the owners, wharfingers, or occupiers of such wharfs or quays, or their agents or other employers, respecting wages or money due to such labourers for work, whether the same persons be employed for any certain time, or in any other manner shall be heard and determined by the justices appointed to the Thames Police Office, or any one of them, or any other justice within his jurisdiction: and every such justice is hereby empowered to summon before him any such master or commander of any vessel, or any such owner thereof, or his agent, or the owner, wharfinger, or occupier of any wharf or quay, or their respective agents, or any other employer: and if any such master, commander, owner, wharfinger, occupier, agent, or employer, shall refuse or neglect to attend such summons, then every such justice is hereby empowered to issue his warrant to bring such person summoned before him, to answer such complaint, and to examine upon oath any such bargeman, lighterman, waterman, ballastman (other than any Trinity ballastman), coal-whipper, coal-porter, sailor, lumper, rigger, shipwright, caulker, or other labourer, or any other witness or witnesses, touching any such complaint or dispute, and to make such order for payment of so much wages to such bargeman, lighterman, waterman, ballastman (other than any Trinity ballastman), coal-whipper, coal-porter, sailor, lumper, rigger, shipwright, caulker, or other labourer, as to such justice shall seem just and reasonable, provided that the sum ordered do not exceed 5*l.* besides all reasonable costs attend-



ing the prosecution of the complaint, which costs the justice is empowered to order; and in case of refusal to pay, or non-payment of any sum so ordered by the space of twenty-four hours next after such determination, such justice may issue forth his warrant to levy the same, by distress and sale of the goods and chattels of the person ordered to pay the same, together with the charges of such distress and sale; and if no sufficient distress shall be found, such justice shall commit the person ordered to make such payment to prison, for any time not exceeding one month, unless the sum so ordered shall be sooner paid; and every such order shall be final and conclusive, to all intents and purposes, and shall not be removeable by *certiorari* or otherwise into any court whatsoever. § 44.

Provided always, that nothing herein contained shall extend to authorize or empower any justice, except the lord mayor, aldermen, and recorder of the city of London, for the time being, or some or one of them, to hear and determine any such differences, complaints, or disputes, as shall or may arise for or in respect of any employment or work done within the said city of London, or the suburbs and liberties thereof, or on board of any shop, hoy, barge, lighter, boat, or other vessel, lying or being on the north side of the river, between the Tower of London and the western extremity of the Temple, adjoining Essex-street, in the county of Middlesex. § 45.

Nothing in this act shall extend to deprive the lord-mayor and commonalty and citizens of the city of London, of any right, privilege, or jurisdiction heretofore lawfully claimed, exercised, or enjoyed within the town and borough of Southwark, or the liberties thereof, or to prevent the said lord mayor for the time being, or such of the aldermen of the said city as have borne the office of mayoralty, or the recorder of the said city for the time being, from acting as justices of the peace within the said town and borough of Southwark, and the liberties thereof, in such and the like manner as they could or might have done in case this act had not been made; nor to deprive the lord mayor and commonalty and citizens of the said city of any right, privilege, immunity, or jurisdiction which they have heretofore lawfully claimed, exercised, or enjoyed upon the said river, or the lord mayor of the said city for the time being as conservator of the said river; nor to prevent the said lord mayor, and the said aldermen and recorder of the said city, from acting as justices of the peace upon the said river, or taking cognizance of offences committed upon or within the limits of the same, in such manner as they might or would have done in case this act had not been made. § 46.

And nothing in this act shall extend to deprive the dean and chapter of the collegiate church of St. Peter, Westminster, or the high steward or high bailiff of the city and liberty of Westminster, for the time being, or their respective lawful deputies, of any rights, privileges, or jurisdictions, which they have heretofore lawfully claimed, exercised, or enjoyed within the said city and

liberty, in such and the like manner as they could or might have done in case this act had not been made. § 47.

And nothing in this act contained shall extend to prejudice or derogate from any of the rights, privileges, or authorities of the master, warden, and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity, and of St. Clement, in the parish of Deptford Strond, in the county of Kent. § 48.

This act shall commence and have effect from the expiration of the said recited act of the last session of parliament, and shall continue and be in force for the term of seven years. § 49.

And this act shall be deemed, adjudged, and taken to be a public act; and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without the same being specially pleaded. § 50.

#### CRUELTY TO ANIMALS, 3 Geo. IV. c. 71.

This act enacts, that if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle, and complaint on oath thereof be made to any justice of the peace or other magistrate, within whose jurisdiction such offence shall be committed, it shall be lawful for such justice of the peace or other magistrate to issue his summons or warrant, at his discretion, to bring the party or parties so complained of before him, or any other justice of the peace or other magistrate of the county, city, or place within which such justice of the peace or other magistrate has jurisdiction, who shall examine upon oath any witness or witnesses who shall appear or be produced to give information touching such offence, (which oath the said justice of the peace or other magistrate is authorized and required to administer); and if the party or parties accused shall be convicted of any such offence, either by his, her, or their own confession, or upon such information as aforesaid, he, she, or they so convicted, shall forfeit and pay any sum not exceeding 5*l.* nor less than 10*s.* to his majesty, his heirs, and successors; and if the person or persons so convicted shall refuse or not be able forthwith to pay the sum forfeited, every such offender, shall, by warrant under the hand and seal of some justice or justices of the peace, or other magistrate within whose jurisdiction the person offending shall be convicted, be committed to the house of correction or some other prison within the jurisdiction within which the offence shall have been committed, there to be kept without bail or mainprize, for any time not exceeding three months. § 1.

Provided always, that no person shall suffer any punishment for any offence committed against this act, unless the prosecution be commenced within ten days after the offence shall be committed; and that when any person shall suffer imprisonment pursuant to



this act, for any offence contrary thereto, in default of payment of any penalty hereby imposed, such person shall not be liable afterwards to any such penalty. § 2.

And no order or proceedings, to be made or had by or before any justice of the peace or other magistrate by virtue of this act, shall be quashed or vacated for want of form; and that the order of such justice or other magistrate shall be final; and that no proceedings of any such justice or other magistrate in pursuance of this act shall be removeable by *certiorari* or otherwise. § 3.  
 \* And for the more easy and speedy conviction of offenders under this act, it is further enacted, that all and every the justice and justices of the peace, or other magistrate or magistrates, before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; (*videlicet*)—

‘ BE it remembered, that on the — day of  
 ‘ in the year of our Lord  
 ‘ A.B. is convicted before me, one of his majesty’s justices of the  
 ‘ peace for [or, mayor or other magistrate of  
 ‘ as the case may be] either by his own con-  
 ‘ fession, or on the oath of one or more credible witness or wit-  
 ‘ nesses [as the case may be] by virtue of an act made in the third  
 ‘ year of the reign of his majesty king George the Fourth, inti-  
 ‘ tuled “*An act to prevent the cruel and improper treatment of*  
 ‘ *cattle,*” [specifying the offence, and time and place where the same  
 ‘ was committed, as the case may be.] Given under my hand and  
 ‘ seal, the day and year above written.’ § 4.

And it is further enacted, that if on hearing any such complaint as is hereinbefore mentioned, the justice of the peace or other magistrate who shall hear the same shall be of opinion that such complaint was frivolous or vexatious, then and in every such case it shall be lawful for such justice of the peace or other magistrate to order, adjudge, and direct the person or persons making such complaint, to pay to the party complained of any sum of money not exceeding 20s. as compensation for the trouble and expence to which such party may have been put to by such complaint; such order or adjudgment to be final between the said parties, and the sum thereby ordered or adjudged to be paid and levied in manner as is hereinbefore provided for enforcing payment of the sums of money to be forfeited by the persons convicted of the offence hereinbefore mentioned. § 5.

And it is further enacted, that if any action or suit shall be brought or commenced against any person or persons, for any thing done in pursuance of this act, it shall be brought or commenced within six calendar months next after every such cause of action shall have accrued, and not afterwards, and shall be brought, laid, and tried in the county, city, or place in which such offence shall have been committed, and not elsewhere; and the

defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial or trials to be had thereon, and that the same was done in pursuance and by authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall not be commenced within the time before limited, or shall be laid off or brought in any other county, city, or place than where the offence shall have been committed, then and in any such case the jury or juries shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or shall discontinue his action or actions, or if judgment shall be given for the defendant or defendants therein, then and in any of the cases aforesaid such defendant or defendants shall have treble costs, and shall have such remedy for recovering the same, as any defendant or defendants hath or may have for his, her, or their costs in any other cases by law. § 6.

#### LICENSING PUBLIC HOUSES, 3 Geo. IV. c. 77.

From and after the passing of this act, every person to whom the justices of the peace or magistrates shall grant a licence or authority to keep a common inn, alehouse, or victualling house, or to sell ale, beer, cyder, perry, or other exciseable liquors by retail, within that part of the United Kingdom, called England, shall, upon such licence or authority being granted or issued, enter into a recognizance in the sum of 30*l.* with one sufficient surety in the sum of 20*l.* or two sufficient sureties in the sum of 10*l.* each, which recognizance, with the condition thereof, shall be in the form prescribed by the schedule to this act marked (A.); and in case the person applying for such licence shall be hindered through sickness or infirmity, or any other reasonable cause, to attend in person at the meeting of the same justices or magistrates for granting the said licences or authorities, that then it shall be lawful for them to grant such licence or authority upon two sufficient sureties entering into such recognizance, each surety in the penalty of 30*l.* for performance of the condition of the said recognizance, and which said recognizance shall be acknowledged in the presence of the majority, and signed by at least two of the justices or magistrates present at any such meetings for granting licences or authorities, and the same, with the condition thereof fairly written or printed, shall forthwith, or at the next general or quarter sessions of the peace at farthest, after granting such licence or authority, be sent or returned to the clerk of the peace, or person acting as such, for every county, riding, city, liberty, town corporate, or place in that part of the United Kingdom called England, wherein such licences or authorities shall be granted, to be by the said clerk of the peace, or such other person acting as such, duly entered or filed amongst the records of the sessions of the peace; and that for every such licence or



authority granted without taking such recognizance, and for every such recognizance taken and not sent or returned as aforesaid, every justice of the peace or magistrate signing such licence or authority shall forfeit and pay the sum of £3. 6s. 8d.; and every such licence or authority to be granted by justices of the peace or magistrates, after the passing of this act, shall be in the form prescribed by the schedule to this act marked (B.): provided always, that no police officer, patrol, constable, or headborough shall be surety for any innkeeper, alehouse keeper, or victualler under this act. § 1.

And for the better preventing the granting of licences or authorities to unfit and improper persons, to keep alehouses or victualling houses, or to sell ale, beer, or other exciseable liquors by retail, and the occurrence of disorderly conduct in such houses; it is further enacted, that no licence or authority for such purposes shall be granted to any person not thereunto licensed or authorized the year preceding, unless such person shall produce, at the general annual meeting of the justices or magistrates to be held for that purpose, a certificate under the hands of the parson, vicar, or curate, or of the major part of the churchwardens, chapelwardens, and overseers of the poor, and of four reputable and substantial householders and inhabitants, or under the hands of eight respectable and substantial householders and inhabitants, of the parish or place where the person applying for such licence or authority shall have last inhabited or dwelt for a space of six months; which certificate shall set forth the number of the house, and the name of the street, or other true description of the house where such person so dwelt, and also whether he or she was there a housekeeper or an inmate, and whether such person, in such last-mentioned parish or place, kept an alehouse or victualling house, and if so, the sign of such house; and shall also set forth, that such person is of good fame, sober life and conversation, and a fit and proper person to be entrusted with a licence for the purposes aforesaid; and it shall be mentioned in every such licence or authority, to be granted to any person not licensed at the last general licensing day, that such certificate was produced; and in case such certificate, in the form and signed in the manner aforesaid, shall not, on the occasion aforesaid, be produced, or the licence to be granted in such last-mentioned cases shall omit to state that such certificate was so produced, such licence or authority shall be null and void; and every such certificate so required to be produced on such occasion as aforesaid, shall be annexed to the recognizance to be entered into by the person receiving or obtaining such licence or authority as aforesaid, and shall with such recognizance be sent or returned to the clerk of the peace, or person acting as such as aforesaid; provided always, that if any person shall forge or counterfeit any certificate, or write any name on any such certificate, to resemble, imitate, or represent the name of any parson, vicar, or curate, or any churchwarden, chapelwarden, overseer of the poor, or other person

directed by this act to sign such certificate, with an intent to deceive the justices of the peace granting or having power to grant such licences or authorities, or shall tender or produce any paper with such counterfeit name or writing thereupon, knowing such name or writing to be counterfeit, with intent to deceive the said justices, or shall take or receive any sum or sums of money for signing or procuring signatures to any such certificate, every person so offending, being thereof lawfully convicted, shall be adjudged to be guilty of a misdemeanor, and shall suffer punishment accordingly. § 2.

And it is further enacted, that the recognizance, in the form and with the surety or sureties required to be entered into on granting licences or authorities to persons to keep alehouses or victualling houses, or to sell ale, beer, or other exciseable liquors by retail, and the certificate in the form and with the signatures required to be produced, by persons not licensed for those purposes the preceding year, shall also be entered into and produced by persons applying for and obtaining such licences or authorities, at any special meetings of the justices to be holden for those purposes, pursuant to the directions of the 32 Geo. III. c. 51. intituled, "*An act to amend so much of two acts of the 26 & 29 Geo. II. as relates to the licensing of alehouse keepers and victuallers, and for better regulating alehouses, and the manner of granting such licences in future; and also of granting licences to persons selling wines to be drank in their houses.*" § 3.

And it is further enacted, that the register or calendar required by law to be kept by clerks of the peace, of recognizance to be taken and returned by justices of the peace, on granting such licences as aforesaid, shall contain the names and places of abode of the several sureties who shall so enter into such recognizances; and that as well the entries of the names of such sureties, as of the other particulars of such recognizances already required to be registered, shall be entered by the respective clerks of the peace, or other persons acting as such, to whom such recognizances shall be returned; and that for every recognizance there shall be paid, by the clerk or clerks of the justices taking such recognizances, to the said clerk of the peace, as their fee for filing or recording the said recognizances and for making such entry thereof, and of the names or name of the sureties or surety to be thereby bound, and for making and delivering copies of the said register as by law required, the sum of 2s. and no more, which shall be paid to the clerks of the said justices by the persons licensed, over and above the fees payable by law to the said justices' clerks: and it shall be lawful for any person or persons on application, at all reasonable times, to see, inspect, and examine every such register, so to be kept by the said clerks of the peace, on payment or tender made by the person or persons requiring the same, to such clerks of the peace, of the sum of 1s. for every such inspection or examination. § 4.

And from and after the passing of this act it shall and may be



lawful to and for the clerks to the several justices of the peace, to be assembled at any general annual meeting for the purpose of granting licences or authorities to persons to keep alehouses, or to sell ale, beer, or other exciseable liquors by retail, in that part of the United Kingdom, called England, and also at any special meeting for the like purposes to be held pursuant to the directions of the 32 Geo. III. to ask, demand, and receive of and from every person to whom a licence or authority, for the purposes aforesaid, shall be granted, renewed, or continued, as and for the trouble of such clerks in filling up such licence or authority, and taking and returning the recognizance to be so entered into, the sum of 5*s.* and no more, over and above the fees directed to be paid to the several clerks of the peace, for filing such recognizance; and in case any clerk to such justices, or other person acting as such, shall demand, or take or receive of or from any person to whom such licence or authority as aforesaid shall hereafter be granted, or renewed or continued, as and for his fee or reward for the trouble of preparing the same, and taking and returning such recognizance as aforesaid, any further or greater fee or reward or recompence than the said sum of 5*s.* every person so offending shall for every such offence, and on conviction on the oath of one credible witness, forfeit and pay the sum of 5*l.* to be sued for, recovered, levied, and applied in the same manner as any other pecuniary penalty imposed by this act may be sued for, recovered, levied, and applied. § 5.

The executors, &c. of a licensed person may be continued in possession of such licence, upon entering into the like recognizances. § 6.

All general annual meetings for licensing public houses are to be in September in each year. § 7.

All persons who hold licences to sell ale, beer, and other liquors by retail, which would expire at a different period of the year from that at which they will expire after the passing of this act, shall be allowed in the payment of their duties, upon the first renewal of their licences under this act, for so much of their current year as shall not have then expired. § 8.

And it is further enacted, that so much of the act of the 56 Geo. II. as relates to the forfeiture of the recognizance of any person licensed to keep a common alehouse, victualling house, or to sell ale, beer, or other exciseable liquors by retail, and the subsequent disability of such party to hold a licence for the space of three years, be repealed; and also, that from and after the passing of this act, the several statutes and acts, in parts of statutes and acts following, shall be repealed; that is to say, so much of the 1 Jac. I. c. 9. as relates to penalties and punishments of innkeepers, victuallers, and alehouse keepers for the offences therein mentioned; and also so much of two statutes passed in the 7 Jac. I. c. 10. and 21 Jac. I. c. 7. as relates to the disabling persons to keep an alehouse for three years in the cases therein mentioned; and also so much of the 1 Car. I. c. 4. as relates to the penalty on

alehouse keepers and victuallers therein mentioned ; and also so much of the 30 Geo. II. c. 24. as relates to the penalty on persons licensed to sell any sorts of liquors in the case therein mentioned, and which said several acts and parts of acts are repealed accordingly ; and that from and after the passing of this act, every licensed person selling ale, beer, or other exciseable liquors by retail, in that part of the United Kingdom called England, who shall be lawfully convicted of any offence against the condition of any subsisting recognizance entered into by such licensed person, or against the tenor of any licence granted and now subsisting, or hereafter to be granted, or against the condition of the recognizance by this act required to be entered into by such licensed person, or against the tenor of the licence to be granted by virtue of this act, shall for every such offence forfeit and undergo the several penalties and punishments and disabilities hereinafter mentioned and provided in that behalf, instead and in lieu of the several pecuniary and other punishments and disabilities which they are now or immediately before the passing of this act were liable or subject to by any law then in force : (that is to say) For the first offence, a sum not exceeding 5*l.* with the costs and expences of convicting such offender ; and in case the said penalty, with the costs and expences of convicting such offender, shall not be paid within the space of fourteen days next after such conviction, that then the offender shall suffer imprisonment for the space of one month, in the common gaol or house of correction for the county, riding, city, liberty, town corporate, or place where such conviction shall take place, unless he or she shall sooner pay such penalty, and the costs, charges, and expences of such conviction, and executing the same : and for the second offence, a sum not exceeding 10*l.* and also the costs and expences of convicting such offender ; and in case such penalty, with the charges and expences of convicting such offender the second time, shall not be paid within the space of seven days next after such second conviction, that then the offender shall suffer imprisonment for the space of two calendar months, in such common gaol or house of correction as aforesaid, unless he or she shall sooner pay such second penalty, and the costs, charges, and expences of such second conviction, and executing the same : and for the third offence against the tenor of such licence or recognizance, it shall be lawful for any one justice of the peace of any county, riding, city, liberty, or town corporate, or place wherein such licence shall be granted, and it is hereby required of him, upon complaint or information on oath that such licensed person hath committed such third offence, to issue a summons under his hand and seal, requiring such person so complained of or informed against for such last-mentioned offence to appear at the next general or quarter sessions of the peace for the county, riding, city, liberty, town corporate, or place wherein the person so complained of or informed against shall reside, then and there to answer to the matter of such complaint or information, and also to bind the person or



persons who shall make such complaint or information, or any other person or persons, in a recognizance to appear at such general or quarter sessions, and give evidence against such person so complained of or informed against; and the justices of the peace, in their general or quarter sessions of the peace, shall have power to direct the jury which shall attend at such sessions for the trial of traverses, or some other jury of twelve honest and substantial men, to be then and there impannelled by the sheriff, bailiff, or other chief officer, without fee or reward, to inquire of the misdemeanor charged in the said last-mentioned complaint or information; and if such jury shall find that the person so complained of or informed against hath committed any act against the tenor of the said recognizance, such act being specified in the said complaint or information, and such person so complained of or informed against having been twice previously convicted for offences against the tenor of the said licence or recognizance, it shall and may be lawful for the court at such general or quarter sessions to adjudge such person guilty of a third offence against the tenor of and a breach of the said recognizance, which verdict and adjudication shall be final to all intents and purposes; and thereupon the said justices shall have power and authority to punish the party so to be convicted by fine, not exceeding the sum of 100*l.* or at the discretion of the said court to declare the said recognizance so entered into by the said offender to be forfeited, or immediately to adjudge the licence or authority granted to such offender to be forfeited and void; and on such last-mentioned adjudication on such verdict, such licence shall from thenceforth be void accordingly, and every licence then held by such offender to sell spirituous liquors, cyder, perry, or British sweets, shall thereupon also be void; and the said person, the condition of whose recognizance shall be so adjudged to be broken and forfeited, shall, from and after such last-mentioned adjudication, be utterly disabled to sell ale, beer, cyder, perry, spirituous liquors, or strong waters, for the space of three years, to be computed from the time of the offence committed for which such adjudication shall be pronounced; and any licence or licences granted or to be granted to such person during such term, to be computed as aforesaid, shall be void and of none effect; provided, that the said justices may, at the request of the prosecutor or party so complained of or informed against, or either of his or her sureties, and upon sufficient cause shewn, adjourn the hearing and trial of the said complaint or information to the then next general or quarter sessions of the peace, when the same shall be finally determined: provided always, that no recognizance under this act shall be declared to be forfeited, unless upon being directed so to be by the said court of general or quarter sessions, upon such third conviction as aforesaid; and provided also, that if such licensed person or persons so complained of or informed against for such last-mentioned offence shall not appear at the next general or quarter sessions of the peace pursuant to the summons, i shall

and may be lawful for the justices in their general or quarter sessions assembled, on proof of the service of such summons, to inquire into the matter alleged, and on proof thereof to proceed against the person or persons so summoned and not appearing, in the same manner as if such person or persons had appeared pursuant to his, her, or their recognizance. § 9.

The production of recognizance by the clerk of the peace is to be sufficient evidence of the person complained of being a licensed victualler; and if the jury shall, on trial, find the party so complained of or informed against Not Guilty of the offence so laid to his or her charge, or if on the verdict of Guilty by such jury the court shall adjudge the offender to be punished by fine, or by declaring the recognizances to be forfeited, instead of vacating the licence of such offender as aforesaid, the party so holding or possessing such licence shall nevertheless, after such adjudication of Not Guilty, or punishment by fine on a verdict of Guilty, be liable to the same punishment and disability as any other licensed victualler who shall have been twice convicted of offences against the condition of his or her recognizance, on any subsequent complaint or information and inquiry thereon at such court of sessions, for any offence in breach of such recognizance and licence. § 10.

The clerks to the licensing justices are deemed to be prosecutors, and their expences are to be paid out of the county rates. § 11.

And it is further enacted, that it shall and may be lawful to and for two justices of the peace for the time being of the county or place where any of the offences against this act for the commission of which pecuniary penalties are imposed shall be committed, to hear and determine the same offences in a summary way, which same justices of the peace are hereby authorized and required, upon any information exhibited or complaint made in that behalf to or before them, to summon the party or parties accused, and also the witnesses on either side (if they shall be required to summon any such witnesses), and upon the appearance or contempt of the party or parties accused by not appearing, to proceed to examine and hear the matter in a summary way, and also to examine such witnesses upon oath as shall be produced therein, (which oath the said justices are hereby empowered to give and administer, and to give their judgment thereon; and in case they shall convict the party or parties so accused or complained against of the offence laid to his, her, or their charge, and such party or parties so convicted shall refuse or neglect to pay the penalty or penalties for which he, she, or they shall stand convicted within the time hereinbefore mentioned for that purpose, together with the costs of such conviction or convictions, to be assessed, settled, and ascertained as aforesaid, that then and in every such case it shall and may be lawful for such justices, and they are hereby authorized and required, to issue their warrant or warrants under their hands and seals for the apprehending and committing to the common gaol or house of correction as aforesaid every such



offender, for such time and in such manner as the nature of the offence shall require, according to the provisions aforesaid and the true intent and meaning of this act. § 12.

The penalty on witnesses not attending when summoned is 40s. § 13.

And if any person or persons shall think himself, herself, or themselves aggrieved by the judgment or conviction of any justices of the peace for any of the offences aforesaid, for the commission of which a pecuniary penalty is annexed, and shall give security to the satisfaction of such justices of the peace for the payment of the penalty, costs, and expences to be expressed in the said conviction, within twenty-four hours after the same shall be made, that then and in every such case after such security given, and not otherwise, it shall and may be lawful to and for such offender or offenders to appeal from and against such conviction or convictions to the justices of the peace assembled at the next general or quarter sessions of the peace to be held for such county, riding, division, liberty, city, town, or place, unless such sessions of the peace shall be held within six days or less next after such conviction or convictions shall be so had or made, and in that case to the justices of the peace to be assembled at the next sessions after such first-mentioned sessions, and not afterwards; and that the justices of the peace assembled at such sessions shall thereupon proceed to hear and determine the matter of every such appeal, and their judgment thereon shall be final and conclusive to all intents and purposes whatsoever; and the justices of the peace so assembled at such sessions are hereby authorized and required to award such costs as to them shall appear just and reasonable to be paid by either party, not exceeding in the whole the sum of 5*l.* on any one appeal. § 14.

And, in order to prevent frivolous and vexatious appeals, it is further enacted, that a conviction in the form or to the effect following *mutatis mutandis*, (as the case shall happen to be) shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts or evidence in any more particular manner; (that is to say),

Middlesex, ' A.B. of ' E.F. two of his majesty's justices of the peace for the county ' or city of ' a recognizance entered into by the said A.B. on ' obtaining a licence to sell ale, beer, or other exciseable liquors ' by retail, whereby he, she, or they has or have forfeited the ' sum of ' as the case shall happen to be] besides the costs and expences of ' this conviction, which costs and expences we the said justices ' of the peace do hereby ascertain and assess at the sum of '	} BE it remembered, that on this } of in the year	day  was duly convicted before us, C.D. and of an offence against the condition of on obtaining a licence to sell ale, beer, or other exciseable liquors whereby he, she, or they has or have forfeited the this being the first [or second offence, besides the costs and expences of we the said justices at the sum of pursuant to the statute in such case made
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‘ and provided. Given under our hands and seals the day and year above written.’ § 15.

The convictions are to be registered and stated as to their being the first, second, or third offence, and are to be evidence in any future information. § 16.

Licences not to be granted to any person whose house shall not have been previously licensed at a preceding general annual meeting of the justices ; unless notices of application be given to the clerk of the peace three calendar months prior to the general annual meeting of the justices of the peace for granting licences for the place in which the house shall be situated, for which such licence shall be applied for, and shall affix or cause to be affixed three copies of such notice, written in a fair and legible hand, on the principal door or most conspicuous part of the house for which such licence is intended to be applied for, and on the door of the church of the parish in which such house shall be situated, on three several days within the months of May or June, between the hours of ten of the clock in the forenoon and of four of the clock in the afternoon, and between each of which days of affixing such notices the space of seven days shall elapse ; which notice, and the copies thereof so to be affixed, shall be signed by the party interested in such house, and intending to make such application as aforesaid, or his, her, or their agent thereunto authorized ; and every such notice shall state and set forth the situation of such house in a true and particular manner, together with the rate of building thereof, where any such rate of building exists or is prescribed, and the name, place of abode, and description of the party so applying, and also the name and place of abode of the person proposed to be licensed therein ; and every licence to be granted to sell ale, beer, or other liquors by retail in such new house or other place, not having been used for any of the purposes aforesaid by virtue of a licence granted the preceding year, without such previous notice having been given as aforesaid, shall be void to all intents and purposes. § 17.

No justice of the peace or magistrate in any county, riding, city, liberty, town corporate, or place, in that part of the United Kingdom called England, who is a brewer, maltster, distiller, or dealer in or retailer of ale, beer, or other exciseable liquors, or is concerned in partnership with any person as a brewer, maltster, distiller, or dealer in or retailer of ale, beer, or other exciseable liquors, or shall be the manager or agent of or for any house licensed or about to be licensed for any of the purposes aforesaid, at any of the time or times when any of the powers of this act are to be executed, shall act in any of the meetings for granting of any licence or licences, authority or authorities, or shall convict or join in any conviction, or in the determination of any application for a licence or authority to a person to keep any house not before licensed, or in the determination of any appeal directed by this act ; and every justice of the peace or magistrate who shall



knowingly or wilfully offend in any of the premises, shall for every such offence forfeit and pay the sum of 100*l.* to be recovered by any person who will sue for the same, within six calendar months after such offence committed, by action of debt or on the case, or by bill, suit, or information in any of his majesty's courts of record, wherein no essoign, protection, or wager at law, nor more than one imparlance shall be allowed; which said penalty of 100*l.* shall be paid, one moiety thereof to the person who sues for the same, and the other moiety to the king's majesty, his heirs and successors. § 18.

And it is further enacted, that from and after the 10th of October, 1823, all and every person and persons using and exercising, or that hereafter shall use and exercise the trade or business of a licensed victualler or alehouse keeper, or who shall sell ale, beer, or other exciseable liquors by retail, by virtue of any licence or authority, licences or authorities, already granted, or hereafter to be granted by the justices of the peace in that part of the United Kingdom called England, for so long as he or they shall use and exercise the said trade or business, or shall hold such licence or licences, authority or authorities, and no longer, shall at all times hereafter be disqualified from serving the office of constable, headborough, police officer, or patrol; and if at any time hereafter any such person or persons using the said trade or business, or holding and using such licence or licences, authority or authorities, shall be chosen or elected into the office of constable or headborough, that then such person or persons producing such licence or authority, or licences or authorities, to use and exercise the said trade of a licensed victualler or alehouse keeper, or to sell ale, beer, or other exciseable liquors by retail, duly issued pursuant to the provisions of this act, or of any other act, law, or charter now in force, to the person or persons by whom he shall be so elected or appointed, or by or before whom he shall be summoned, returned, or required to serve or hold the said office of constable, shall be absolutely discharged from the same: and such nomination, election, return or appointment, shall be utterly void and of none effect, any order, custom, law, or statute to the contrary in anywise notwithstanding; nor shall any such person using or exercising the said trade or business of a licensed victualler, or to whom any such licence or authority shall be granted for the purposes aforesaid, while he shall so exercise the said trade, or hold and use such licence or authority, take upon himself, or serve, or execute the office of deputy to any constable already chosen, or hereafter to be chosen and elected to that office within that part of the United Kingdom called England, on pain of forfeiting, for every act to be done, committed or executed by him, as or in the character of deputy to any such constable as aforesaid, the sum of 10*l.* to be recovered in manner hereinbefore directed by virtue of this act. § 19.

And it is further enacted, that from and after the 10th of October, 1822, all persons keeping common inns, alehouses or

victualling houses, and retailing ale and beer, shall sell the same in and from their houses by a full ale quart, pint, or half-pint, made of pewter, sized to the standard, and stamped or marked to be of due size according to the standard, either from the exchequer or from some city, town-corporate, borough, or market-town, where an ale quart, pint, or half-pint, made from the said standard, shall be kept for that purpose, and shall not retail any ale or beer in any other vessels than such stamped pewter ale quarts, pints, and half-pints, unless such ale or beer shall have been first measured in and by such stamped pewter ale quart, pint, or half-pint, in the presence of the guest or customer purchasing the same, under pain of forfeiting for every offence a sum not exceeding 40s. (together with the costs of conviction), to be recovered within thirty days next after the committing of such offence, before any two justices of the peace acting for the county or place in which such offence shall have been committed, the one half to be paid to the person who shall prosecute or sue for the same, and the other half to the poor of the parish or place where such offence shall have been committed; and in case of the non-payment thereof, they shall cause the same to be levied upon the goods and chattels of the offender, by warrant of distress under their hands and seals. § 20.

And from and after the passing of this act, if any brewer or wholesale dealer in ale or beer, in that part of the United Kingdom called England, shall sell and deliver to any innkeeper, ale-house keeper, victualler, or other person whomsoever, any ale or beer, in barrels, casks, or other vessels which shall not be able to contain the full quantity of ale or beer for which the said brewer or wholesale dealer in ale or beer shall charge the purchaser thereof, such brewer or wholesale dealer in ale or beer shall forfeit and pay a sum not exceeding 5*l.* for every such barrel, cask, or other vessel so deficient in size as aforesaid, together with the costs of conviction, to be recovered by information before one justice of the peace, within thirty days next after the making of such charge, who, in case of the non-payment thereof, shall cause the same to be levied upon the goods and chattels of the party so offending. § 21.

And all fines, penalties, and forfeitures imposed by this act, and for which no other means for recovering thereof are hereby provided, may be sued for and recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster; and that one moiety of all and every fine, penalty, or forfeiture by this act imposed, and not expressly directed to be otherwise applied, shall be to his majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same. § 22.

This act not to extend to the city of London. § 23.

Nothing in this act contained is intended to repeal any former act or acts of parliament made in this behalf; except only so far as the same or any of the provisoes and enactments thereof



have been expressly repealed, altered, or amended by the present act. § 24.

Nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of Oxford or Cambridge, or the powers of the chancellors or vice-chancellors of the same, as by law possessed under the respective charters of the said universities. § 25.

And this act shall commence and take place from the passing thereof, and from thence shall continue and be in force for and during the term of three years, and from thence to the end of the then next session of parliament. § 26

#### SCHEDULE (A).

##### *Form of Recognizance.*

Middlesex. } AT a meeting of his majesty's justices of the peace  
 } acting in and for the division [or liberty, &c. as the case may be]  
 held at in the division [or liberty, &c.] and county aforesaid, on  
 the day of one thousand eight hundred and T. S. at the  
 sign of, &c. victualler, acknowledges himself to be indebted to our sovereign  
 lord the king in the sum of pounds; E. F. of, &c. acknowledges  
 himself to be indebted to our sovereign lord the king in the sum of  
 pounds, to be levied upon their several goods and chattels, lands and tene-  
 ments, by way of recognizance to his majesty's use, his heirs and successors,  
 upon condition that the said T.S. do and shall keep the true assize in uttering  
 and selling bread and other victuals, beer, ale, and other liquors in his, her,  
 or their house, and shall not fraudulently dilute or adulterate the same, and  
 shall not use, in uttering and selling thereof, any pots or other measures that are  
 not of full size; and shall not wilfully or knowingly permit drunkenness or tip-  
 pling, nor get drunk in his, her, or their house or other premises; nor knowingly  
 suffer any gaming with cards, draughts, dice, bagatelle, or any other sedentary  
 game, in his, her, or their house, or any of the outhouses, appurtenances, or  
 easements thereto belonging, by journeymen, labourers, servants, or apprentices;  
 nor knowingly introduce, permit, or suffer any bull, bear, or badger-baiting,  
 cock-fighting, or other such sport or amusement, in any part of his, her, or their  
 premises; nor shall knowingly or designedly, and with a view to harbour and  
 entertain such, permit or suffer men or women of notoriously bad fame, or dis-  
 solute girls and boys, to assemble and meet together in his, her, or their house,  
 or any of the premises thereto belonging; nor shall keep open his, her, or their  
 house, nor permit or suffer any drinking or tippling in any part of his, her, or  
 their premises during the usual hours of divine service on Sundays; nor shall  
 keep open his, her, or their house or other premises during the late hours of the  
 night, or early in the morning, for any other purpose than the reception of tra-  
 vellers, but do keep good rule and order therein, according to the purport of a  
 licence granted for selling ale, beer, or other liquors, by retail, in the said house  
 and premises for one whole year, commencing on the 10th day of October next;  
 then this recognizance to be void, or else to remain in full force.

#### SCHEDULE (B).

AT a general meeting of his majesty's justices of the peace, acting in and  
 for the division in the county of holden at within  
 the said division, on the day of one thousand eight hundred  
 and for the purpose of authorizing and empowering persons to keep  
 common inns, alehouses, or victualling houses, we, being of his  
 majesty's justices of the peace, acting in and for the said division and county,  
 assembled at the said meeting, do hereby authorize and empower  
 at the sign of the in in the division and county

aforesaid, having produced the certificate required by law to keep a common inn, alehouse, or victualling house, and to utter and sell in the said house, wherein now dwelleth, called or known by the sign of the and in the premises thereunto belonging, and not elsewhere, victuals, and all such exciseable liquors as shall be licensed and empowered to sell, under the authority and permission of any excise licence which shall be duly granted by the commissioners of excise, or persons to be appointed or employed by them for that purpose: provided that the true assize in bread, beer, ale, cyder, and all other liquors, be duly kept; and that the said do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated, and do not use, in uttering and selling thereof, any pots or other measures that are not of full size, and do not wilfully or knowingly permit drunkenness or tipping, or get drunk, in house or other premises; nor knowingly suffer any gaming with cards, draughts, dice, bagatelle, or any other sedentary game, in house, or any of the outhouses, appurtenances, or easements thereto belonging, by journeymen, labourers, servants, or apprentices; nor knowingly introduce, permit, or suffer any bull, bear, or badger-baiting, cock-fighting, or other such sport or amusement, in any part of premises; nor shall knowingly and designedly, and with a view to harbour and entertain such, permit or suffer men or women of notoriously bad fame, or dissolute girls and boys, to assemble and meet together in house, or any of the premises thereto belonging; nor shall keep open house, nor permit or suffer any drinking or tipping in any part of premises during the hours of divine service on Sundays; nor shall keep open house or other premises during late hours of the night or early in the morning, for any other purpose than the reception of travellers, but that good order and rule be maintained and kept therein; the authority and power hereby granted to continue in force for one whole year, from the 10th day of October next, and no longer.

(Signed)

## ACT TO AMEND THE BANKRUPTCY LAWS.

3 Geo. IV. c. 81.

By this act it is enacted, that it shall and may be lawful to and for the commissioners in any commission of bankrupt, or the major part of them, by writing under their hands and seals, to summon before them, at any meeting or meetings to be held under the commission, after they have duly qualified, and before the bankruptcy is found, all and every such person and persons as they shall be informed and believe can give any account or information concerning the trading, or any act or acts of bankruptcy committed by the person or persons against whom such commission shall be issued; and also to require such person or persons so summoned to produce any books of account, papers, deeds, and writings, and other documents in the custody, possession, or power of such person or persons, which may appear to such commissioners, or the major part of them, to be necessary to establish such trading, or act or acts of bankruptcy; and in case the said person or persons so summoned to appear as aforesaid, shall refuse to come or shall not come before the said commissioners at the time appointed, having no lawful impediment, such as shall be admitted and allowed by the said commissioners, or the major part of them, and made known to the said commissioners



at the time of their meeting, it shall be lawful for the said commissioners, or for the major part of them, by warrant under their hands and seals, and directed to such person or persons as to them, or the greater part of them, shall be thought meet, to apprehend and arrest such person or persons, and to bring him, her, or them before the said commissioners, or the major part of them, to be examined as aforesaid: and upon his, her, or their refusing to come, to commit the party so refusing to such prison as the said commissioners, or the major part of them, shall think meet, there to remain without bail or mainprize until such time as such person or persons so refusing to come shall submit him, her, or themselves to the said commissioners; and upon the appearance of the said person or persons, it shall be lawful for the said commissioners, or the major part of them, to examine him or them concerning the trading of, or any act or acts of bankruptcy committed by the person or persons against whom such commission shall be issued, in the same manner as they are now authorized to examine any person present at any meeting of the commissioners; and in case any person or persons present at any such meeting of the commissioners shall refuse to be sworn, or being one of the people called Quakers, to take the solemn affirmation by law appointed for such people to take, or shall refuse to answer all or any such lawful questions as by the said commissioners, or the major part of them, shall be put unto him, her, or them, touching the trading of, or any act or acts of bankruptcy committed by the person or persons against whom such commission shall issue, as well by word of mouth as by interrogatories in writing, or shall refuse to sign and subscribe his, her, or their examination taken down or reduced into writing (not having a reasonable objection either to the wording thereof, or otherwise, to be allowed by the said commissioners), or shall refuse to produce or shall not produce all and every book of account, paper, writing, and other document in the custody, possession, or power of such person or persons, which may appear to the commissioners, or the major part of them, to be necessary to establish the trading of, or act or acts of bankruptcy committed by the person or persons against whom such commission shall issue, and which such person or persons was or were required to produce, and to the production of which such person or persons shall not state any objection which, in the judgment of the commissioners, or the major part of them, ought to be allowed as lawful objections, it shall and may be lawful to and for the said commissioners, or the major part of them, by warrant under their hands and seals, to commit him, her, or them to such prison as the said commissioners, or the major part of them, shall think fit, there to remain without bail or mainprize until such time as such person or persons shall submit him, her, or themselves to the said commissioners to be sworn, and full answer make to the satisfaction of the said commissioners to all such lawful questions as shall be put to him, her, or them, and sign and subscribe such examination, and produce all such

book and books of account, papers, deeds, writings, and other documents in his, her, or their custody, possession, or power, as may appear to the said commissioners, or the major part of them, to be necessary to establish the trading or act or acts of bankruptcy committed by the person or persons against whom such commission of bankrupt shall be issued as aforesaid, and to the production of which no such objection as aforesaid has been allowed, according to the true intent and meaning of this act. § 1.

And where any witness or witnesses is or are summoned to attend before the commissioners in any commission of bankruptcy, at the meeting appointed by them for opening such commission, the necessary expences shall be tendered to such witness or witnesses, in the same manner, as is now by law required upon service of a subpoena to a witness in any action at law. § 2.

And all powers vested in or belonging to any bankrupt or bankrupts, which he, she, or they might legally execute for his, her, or their own benefit, (except the right of nomination to any benefice with cure of souls, or parochial church or chapelry then actually vacant), shall and may be executed and exercised by the assignee or assignees for the benefit of the creditors, in such and the same manner, to all intents and purposes, as the bankrupt himself could or might have executed or exercised the same. § 3.

And it is further enacted, that it shall and may be lawful for the lord chancellor, lord keeper, or lords commissioners of the great seal, upon a petition presented to him or them by the assignee or assignees, or by a purchaser under the commission from the assignee or assignees, of any part of the bankrupt's estate or effects, to order the bankrupt, at the time of the allowance of or after he has obtained his certificate, to join in the conveyance and assurance of any estate and effects of such bankrupt, according to the tenor of any order that shall be made therein upon such petition; and if any such bankrupt shall refuse or neglect to execute any such deed or conveyance within such time and in such manner as shall be directed by such order so to be made as aforesaid, then such bankrupt so refusing, declining, or neglecting to execute such deed or conveyance, and his heirs, executors, administrators, and assigns, and all and every person claiming under him by virtue of any act by him done from the time he became bankrupt, shall be for ever stopped from objecting to the validity of such deed or conveyance; and such deed or conveyance shall, upon an order made upon petition by the lord chancellor, lord keeper, or lords commissioners of the great seal, be declared to be and as effectual to all intents and purposes whatsoever, both at law, and in equity, as if it had been executed by the said bankrupt. § 4.

And whereas by an act of the 5 Geo. II. c. 30. intituled, "*An act to prevent the committing of frauds by bankrupts,*" reciting, that it might be found necessary that as well assignments of bankrupts' estates then already made by commissioners, as assignments thereafter to be made pursuant to the choice of creditors, should



be vacated, and a new assignment or assignments made of the debts and effects unreceived and not disposed of by the then assignees to other persons to be chosen by the creditors ; it was therefore enacted and declared, that it should and might be lawful to and for the lord chancellor, lord keeper or commissioners for the custody of the great seal for the time being, upon petition of any creditors, to make such order therein as he or they should think just and reasonable ; and in case a new assignment should be ordered as aforesaid, then that such debts, effects, and estate of such bankrupt should be thereby effectually and legally vested in such new assignee or assignees : and whereas doubts have arisen whether the said clause extends to authorize the vacating of deeds of bargain and sale enrolled of the lands, tenements, and hereditaments of bankrupts, and it is deemed expedient that such doubt should be removed ; it is therefore enacted, that such clause does extend to the vacating of any deeds of bargain and sale enrolled of the lands, tenements, and hereditaments of any bankrupt ; and that from time to time hereafter it shall and may be lawful to and for the lord chancellor, lord keeper, or lords commissioners for the great seal for the time being, upon the petition of any creditors, to make such order as he or they shall think just and reasonable, for the vacating of any deed of bargain and sale of the lands, tenements, and hereditaments, freehold or copyhold, of any bankrupt or bankrupts then remaining unsold and not conveyed, and the enrolment thereof, without nevertheless in any manner affecting the title of any purchaser under any bargain and sale prior to such order being made, and without reviving any estate previously barred, but the title of every such prior purchaser, and of all claiming under him, shall be good and valid to all intents and purposes whatever, in the same manner as if no such order had been made ; and that the lord chancellor, lord keeper, or lords commissioners for the time being, may order the commissioners, or the major part of them, to execute a new bargain and sale of such lands, tenements, and hereditaments as shall remain unsold or not conveyed to such person or persons, and in such manner as to him or them may seem just ; and that such conveyance shall be good and valid to all intents and purposes whatsoever, without any conveyance from any former assignee or assignees, or his or their heirs or assigns : provided always, that the order so made for vacating such bargain and sale shall be duly enrolled, together with the new bargain and sale made in pursuance of such order. § 5.

And whereas doubts have been suggested, whether any person who wilfully and corruptly swears falsely in an affidavit made before a master in chancery in any matter of bankruptcy, is liable to the pains and penalties now by law inflicted for this offence of wilful and corrupt perjury, and which doubts ought to be removed ; it is therefore further declared and enacted by the authority aforesaid, that every such offender is liable to such pains and penalties ; and that if any person at any time hereafter shall wil-

fully and corruptly swear falsely in any affidavit or deposition (or, being of the people called Quakers, shall wilfully and corruptly affirm falsely), before any master in chancery in ordinary or extraordinary in any matter of bankruptcy, such person, being convicted thereof by indictment or information, shall be liable to suffer the pains and penalties now in force against wilful and corrupt perjury. § 6.

And it is further enacted, that, on the trial of any suit or action now commenced or brought, or to be commenced or brought, or of any issue directed or which shall hereafter be directed to be tried, an office copy of any bond, affidavit, certificate, report, exception, letter of attorney, or of any other original instrument or writing filed in the office, or officially in the custody or possession of the lord chancellor's secretary of bankrupts for the time being, shall be evidence to be received of such bond, affidavit, certificate, report, exception, letter of attorney, or other original instrument or writing respectively, without producing the original, such copy being upon proper stamp, and proved by oath on such trial to be a true copy; and in case any such bond, affidavit, certificate, report, exception, letter of attorney, or other writing, shall hereafter be produced on any such trial, the costs of producing the same shall not be allowed on taxation of costs in any such suit or action, unless it shall be made appear, to the satisfaction of the officer who shall tax such costs, that, from the nature of the case to be proved, the production of such bond, affidavit, certificate, report, exception, letter of attorney, or other writing on any such trial was necessary, and not occasioned through any neglect, default, or delay in obtaining such office copy thereof as aforesaid: provided always, that nothing herein contained shall extend to authorize the receiving in evidence of such office copy, or to alter or affect any evidence now required, on the trial of any indictment or prosecution for felony or perjury, or other offence or misdemeanor. § 7.

And it is further enacted, that any creditor or creditors whose debt or debts is or are of a nature and amount sufficient to entitle him, her, or them to petition for a commission of bankruptcy to be issued against all the partners of any firm, may petition for a commission of bankruptcy to be issued against two or more partners of such firm; and that a commission may be issued upon such petition, which shall be valid at law, to all intents and purposes whatsoever, notwithstanding it does not include all the partners of which the firm is composed. § 8.

And also, that if, after a commission of bankruptcy shall be issued against two or more members composing part of a firm, another commission or other commissions of bankruptcy shall be issued against any one or more members of such firm not included in the commission which first issued, such second, third, or other commission shall be directed to the commissioners to whom the first commission was directed; and immediately after the declaration of bankruptcy under such second, third, or other commis-



sion, the commissioners or the major part of them shall convey to the assignee or assignees chosen under the first commission all the estate, real and personal, of such bankrupt or bankrupts, in the same manner as if such commission had first issued; and from and after such conveyance, all separate proceedings under such second, third, or other commission shall be stayed, and it shall, without affecting the validity of the first commission, be annexed to and form part of such first commission: provided always, that the lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, may, if it to him or them appear necessary, direct that such second, third, or other commission to be issued to any other commissioners, or that such commission shall proceed, either separately or in conjunction with such first commission, in the same manner as if such second, third, or other commission had alone issued. § 9.

And it is further enacted, that in case a joint creditor or joint creditors of three or more persons being partners shall be the petitioning creditor or creditors in a commission of bankruptcy issued against two or more persons being partners, as well such joint creditor as any other joint creditor shall be permitted to vote in the choice of assignees, and to assent to or dissent from the signature of the said bankrupt's certificate in respect of his, her, or their joint debt or debts: but neither the petitioning nor any other joint creditor shall be permitted to receive any other dividend out of the separate estate of the said bankrupt or bankrupts until all the separate creditors of the said bankrupt or bankrupts shall have received 20s. in the pound on their respective debts. § 10.

And it is further enacted, that after an assignee or assignees has or have been chosen under any commission which may be issued against one or more member or members of a firm, it shall and may be lawful for the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, by order upon petition presented to him or them, to permit and authorize the assignee or assignees of the estate and effects of any such bankrupt or bankrupts to commence or prosecute any action or actions, suit or suits, or other proceedings at law or equity, in the name or names of such assignee or assignees and of the remaining partner or partners, against any debtor or debtors of the said partnership, and shall and may recover and obtain such judgment, decree, or order therein, in the same manner as if such action, suit, or proceeding was instituted with the consent of such partner or partners whose names shall be so used in such action or proceeding; and that if such partner or partners whose names shall by such order be so used shall attempt, by any means whatsoever, to release the debt or demand for which such action, suit, or proceeding is instituted, such release shall be null and void to all intents and purposes whatsoever: provided always, that the partner or partners whose name or names is or are used in pursuance of such order, and by whom no benefit is claimed by virtue

of the said proceedings, shall be indemnified against the payment of any costs in respect thereof; and provided also, that in all cases it shall be lawful for such partner or partners, whose name or names is or are so used, to apply by petition to the lord chancellor, lord keeper, or lords commissioners of the great seal, praying that he, she, or they may receive the whole or such part of the proceeds of such action, suit, or proceeding to which he, she, or they may be entitled, who shall thereupon make such order as under all the circumstances of the case shall seem meet and just, and which shall be binding on all the parties. § 11.

And in all commissions of bankruptcy which shall hereafter issue against all or any of the members of any partnership, under which any one or more of the persons against whom the commission shall issue shall obtain his, her, or their certificate, and a sufficient dividend be paid upon the joint estate of the firm, and the separate estate of him, her, or them who has or have obtained such certificate, he, she, or they shall be entitled to his, her, or their allowance, notwithstanding no allowance may be due to any one or more of his, her, or their copartners. § 12.

This act not to extend to Ireland and Scotland. § 13.

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#### ENROLMENT OF MEMORIALS OF GRANTS OF ANNUITIES. 3 Geo. IV. c. 92.

Doubts having arisen respecting the construction of some parts of the act of the 53 Geo. III. c. 141. relating to the enrolment of life annuities in the court of chancery, and it being deemed expedient to remove all doubts touching the construction of the said act, with respect to so much of the memorials required by the said act to be enrolled as relates to any description of the witness or witnesses to any deed, instrument, or assurance: it is therefore enacted and declared, that by the said act of the fifty-third year of the reign of his said late majesty, no further or other description of the subscribing witness or witnesses to any deed, bond, instrument, or other assurance, whereby any annuity or rent charge is or may be granted, is required in the memorial thereof, besides the names of all such witnesses; and so the said act shall be deemed, construed, and taken. § 1.

And doubts having also arisen, whether under the said act the omission to enrol a memorial of any one of the assurances for securing any annuity or rent charge does not vitiate the whole transaction, notwithstanding the enrolment of a memorial of another deed, bond, instrument, or other assurance granting the same; and it is also expedient to remove such doubts: it is further enacted and declared, that every deed, bond, instrument, or other assurance granting any annuity or rent charge, and of which a memorial shall have been or shall be duly enrolled pursuant to the said act, notwithstanding the omission to enrol any other deed, bond, instrument or assurance for securing such annuity or rent charge, shall be valid and effectual, according to the intent,



meaning, and true effect thereof, notwithstanding a memorial of any other deed, bond, instrument, or assurance for securing the same annuity shall not have been duly enrolled pursuant to the said act. § 2.

Provided, that nothing herein contained shall extend to give any other force or validity to any deed, bond, instrument, or other assurance of which a memorial shall have been duly enrolled as aforesaid, than such deed, bond, instrument, or other assurance would have had, if any deed, bond, instrument, or other assurance for securing the same annuity, of which a memorial shall not have been duly enrolled, had never been executed. § 3.

Provided also, that this act shall not extend or be construed to extend to revive or give effect to any deed, bond, instrument, or other assurance, whereby any annuity or rent charge hath been already granted, so far as the same hath been adjudged, declared, treated, or deemed void by any judgment, decree, action, suit, or proceeding at law or in equity, or by any acts or deeds of the parties thereto, or by any other legal or equitable means whatsoever; nor shall this act affect or prejudice any suit or proceeding at law or in equity, commenced on or before the 31st of May, 1822, and now depending, upon the ground of an alleged defect in the memorial thereof, in not describing the witnesses thereto otherwise than by his, her, or their name or names, for avoiding any such deed, bond, instrument, or other assurance. § 4.

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#### CARRIAGES AND STAGE COACHES. 3 Geo. IV. c. 95.

By this act it is enacted, that from and after the 1st of September, 1822, the duties mentioned in the schedule annexed to the act of the 55 Geo. III. c. 185. and thereby made payable upon stage coaches or other carriages with two or more wheels, which should be employed as public stage coaches or carriages for conveying passengers for hire to or to and from any place or places in Great Britain, as far as the same relates to carriages or vehicles drawn by one or two horses, and not being upon or having the aid or assistance of any spring or springs, or (if drawn by one horse) being upon or having the aid or assistance of any spring or springs, or if drawn by two or more horses, and such carriages or vehicles shall be made for the accommodation of one description of passengers only, not distinguishing between inside and outside passengers, and shall be upon or have the aid or assistance of any spring or springs, shall cease, determine, and be repealed; save and except as to so much and such part of the said duties as shall have become due or payable before or upon the said 1st day of September, and shall remain in arrear or unpaid afterwards. § 1.

And that, from and after the said 1st day of September, in lieu of so much of the said duties hereby repealed, there shall be raised, levied, collected, and paid unto and for the use of his

majesty, his heirs and successors, in and throughout the whole of Great Britain, the rates and duties or sums of money following; that is to say—For or in respect of any carriage or vehicle with two or more wheels, not being upon or not having the aid or assistance of any spring or springs of any kind whatsoever, and which shall be kept, used, employed, or let out for the purpose of conveying passengers for hire, to or from, or from and to different places in Great Britain, and drawn by one horse only, for every mile that any such carriage or vehicle shall be licensed to travel, the sum of one penny; any such carriage or vehicle as above described, drawn by two horses only, for every mile that such carriage or vehicle shall be licensed to travel, the sum of two-pence; any carriage or vehicle drawn by one horse only, being upon or having the aid or assistance of any spring or springs of any kind whatsoever, which shall be kept, used, employed, or let out for the purpose of conveying passengers for hire as aforesaid, for every mile that any such carriage or vehicle shall be licensed to travel, the sum of one penny halfpenny; any carriage or vehicle drawn by two horses only, being upon or having the aid or assistance of any spring or springs of any kind whatsoever, but which shall be made for the accommodation of one description of passengers only, not distinguishing between inside and outside passengers, and which shall be kept, used, employed, or let out for the purpose of conveying passengers for hire as aforesaid, for every mile that such carriage or vehicle shall be licensed to travel, the sum of three-pence; any such carriage or vehicle as last aforesaid, drawn by three or more horses, for every mile that such carriage or vehicle shall be licensed to travel, the sum of four-pence halfpenny. § 2.

And it is further enacted, that immediately from and after the passing of this act, the commissioners of stamps in Great Britain, or the major part of them, are hereby directed and required to provide proper and sufficient plates, at the expence of the person or persons applying for a licence to keep, use, employ, or let out any carriage or vehicle for the purpose of conveying passengers for hire to or to and from any place or places in Great Britain, each plate or pair of plates having thereon a distinct number, to be named by the said commissioners, for the purpose of being fixed or placed upon the door, or if more than one, upon each door, or upon some other part or parts of every carriage or vehicle used, employed, or let out for the purpose of carrying and conveying passengers for hire as aforesaid, (except mail coaches and hackney coaches duly licensed by the commissioners of hackney coaches, or under any local act or acts relating to hackney coaches, and not licensed by the said commissioners of stamps); and to alter and renew such plate or plates from time to time, as the said commissioners of stamps shall think necessary, or as occasion shall require; and the said commissioners, or any other persons authorized so to do, granting any such licence as aforesaid, are hereby required and directed to deliver to the person



or persons applying for such licence, at the time of granting the same, or at any other time, as occasion may require, such plate or plates to be placed or fixed upon every such carriage or vehicle as aforesaid, and to insert or cause to be inserted in the said licence the number of the plate or plates so delivered in respect of such carriage or vehicle in respect of which such licence shall be granted. § 3.

And it is further enacted, that from and after the 31st August, 1822, it shall not be lawful for any person or persons to use, employ, or let out, or to permit or suffer to be used, employed, or let out, any carriage or vehicle for the purpose of conveying passengers for hire as aforesaid, before fixing or placing, or causing to be fixed or placed on the door, or if more than one, upon each door, or if there be no door, upon one of the pannels on each side of such carriage or vehicle, or if there be no pannels, then upon some conspicuous part or parts of such carriage or vehicle, one of the plates hereby required to be fixed and placed thereupon; and in case such plate shall at any time be broken, or become illegible, the person or persons to whom any such licence as aforesaid shall be granted, shall, within three days after such plate shall be broken, or become illegible, apply to the said commissioner of stamps, or to the person authorized to grant such licence, for a new plate or new plates; and on delivery to the said commissioners, or to the person authorized to grant such licence, of the old plate or plates, or part thereof, it shall be lawful for the said commissioners of stamps, and they are hereby authorized and empowered, to deliver a new plate or new plates of the same, or any other number, to the person or persons whose plate or plates shall have been broken or become illegible as aforesaid, which new plate or new plates such person or persons is and are hereby directed and required, as soon as conveniently may be after the receipt thereof, to affix or place, or cause to be affixed or placed, on such carriage or vehicle, as by this act is directed. § 4.

And if any person or persons shall, from and after the said 31st of August, keep, use, employ, let out, or permit or suffer to be used, employed, or let out, any carriage or vehicle for the purpose of conveying any passenger or passengers for hire, to or from or from and to different places in Great Britain, not having the plate or plates fixed or placed thereupon as hereby directed, or having any plate or plates fixed or placed on such carriage or vehicle as aforesaid, of a different or other number than that mentioned in the licence granted to such person or persons, or having any broken or illegible plate or plates on any such carriage or vehicle, such persons or person so offending in any or either of the said cases, shall forfeit, for every day on which such carriage or vehicle shall be so used, employed, or let out for hire, the sum of 20*l.*: provided nevertheless, that nothing herein contained shall be construed to charge any person or persons with the said penalty of 20*l.* to which he, she, or they may become

subject, between the time of any such plate or plates having been broken or become illegible, and the time hereby allowed for affixing or placing a new plate or plates, on such carriage or vehicle as aforesaid, in the place of any plate or plates that may have become broken or illegible. § 5.

And it is further enacted, that every carriage or vehicle used, employed or let out for the purpose of conveying passengers for hire to or from or from and to any place or places in Great Britain, and travelling at the rate of three or more miles in the hour, shall, without regard to the number of wheels or to the number of horses by which the same may be drawn, or to the number of passengers which the same shall or may be able or fitted to contain or carry, or to its being an open or close carriage, be deemed and taken to be a stage coach or carriage within the meaning of this act, or any former act or acts of parliament relating to the duties on carriages or vehicles kept, used, and employed, or let out for the purpose of conveying passengers for hire as aforesaid; provided the passenger or passengers to be carried or conveyed by any such carriage or vehicle, shall be charged or shall pay separate and distinct fares, or a separate and distinct fare, or be charged at the rate of separate and distinct fares, for his, her, or their place or seat, or places or seats therein, or conveyance thereby respectively. § 6.

And it is further enacted, that in all actions, bills, complaints, informations, or proceedings, to be commenced, prosecuted, entered or filed in any of his majesty's courts of Great Britain, or before any justice of the peace or other magistrate whatsoever in Great Britain, against any person or persons, for the recovery of any duty, fine, penalty, or forfeiture incurred under or by force of this act, or any former act or acts of parliament relating to the duties on carriages or vehicles, kept, used, employed, or let for the purpose of conveying passengers for hire as aforesaid, if evidence shall be offered and given that the carriage or vehicle in respect of which, or in any manner relating to which any such action, bill, complaint, information, or proceeding shall be commenced, prosecuted, entered, or filed, was seen travelling or going upon any turnpike road or public highway in Great Britain, such carriage or vehicle having fixed or placed thereupon a plate or plates as required by this act to be fixed or placed upon carriages or vehicles used, employed, or let out for the purpose of conveying passengers for hire, or having painted or marked thereupon any of the particulars required by any former act or acts of parliament relating to such carriages or vehicles, such carriages or vehicles shall (unless the contrary be proved) be deemed and taken to be a carriage or vehicle kept, used, employed, and let out for the purpose of conveying passengers for hire to or from or from and to different places in Great Britain; and that in all such actions, bills, complaints, information or proceedings, the person or persons described in the licence granted in respect of such carriage or vehicle shall (unless the contrary be proved) be considered



as the person or persons to whom such carriage or vehicle doth belong, and shall be liable to the duty or duties, penalty or penalties, imposed by this act, or any former act or acts of parliament relating to the duties on such carriages or vehicles as aforesaid. § 7.

And it shall and may be lawful for any person or persons duly authorized to examine the plates by this act directed to be fixed and placed upon carriages or vehicles used or employed for the purpose of conveying passengers for hire, from time to time to enter into and remain in any toll house or other place, at the gate or bar of which any toll is by law payable, for the purpose of examining such plates. § 8.

And if any toll collector or toll-gate keeper, or any other person or persons, shall refuse to permit any person or persons authorized to examine the plates directed to be fixed and placed upon carriages or vehicles used, employed, or let out for the purpose of conveying passengers for hire, from time to time to enter into and remain in any toll-house or other place, at the bar or gate of which any toll is by law payable; or shall obstruct or hinder or molest such person or persons in entering into and remaining in such toll-house or place as aforesaid, for the purpose of examining such plates; or if any toll collector or toll-gate keeper, or any other person or persons, shall in any way hinder, molest, interrupt, or disturb any such person or persons authorized to examine such plates, in the reasonable use of such toll-house or other place as aforesaid, for the purpose aforesaid, every such toll collector, or toll-gate keeper, and every person aiding and assisting such toll collector or toll-gate keeper, and every person offending in any of the cases aforesaid, shall for every such offence forfeit the sum of 20*l.* § 9.

And it is further enacted, that from and after the said 31st of August, every carriage or vehicle for or in respect or on account whereof any duty is imposed, or which shall become due and payable under or by virtue of this act, or by the 55 Geo. III. and the schedule thereto, and all and every the horse or horses, and harness, and all other articles and things used or employed for the purpose of drawing such carriage or vehicle as aforesaid, in the custody and possession of the person or persons, or any of them, to whom any such licence shall have been granted as aforesaid, or in the custody or possession of any other person or persons, to the use and for the account of or in trust for such person or persons, to whom any such licence shall have been granted as aforesaid, or any of them, shall be and the same are hereby made subject and liable to, and chargeable with all the duties in arrear and owing, or which shall become due and payable from time to time from or by such person or persons, for or in respect of such carriage or vehicle kept, used, or employed by him, her, or them respectively, for the purpose of conveying passengers for hire as aforesaid. § 10.

And whereas by the 50 Geo. III. it was (amongst other things enacted, that in case the driver of any coach, mail coach, or other

carriage, as therein described, or the person acting as guard, should, by intoxication, or by negligence or other misconduct (unavoidable accidents always excepted) endanger the safety of the passengers in their lives, their limbs, or their property, then and in every such case the driver or guard (as the case may be) so offending, and being convicted thereof by his own confession, the view of a justice (in any case applicable thereto,) or the oath or oaths of one or more credible witness or witnesses, before any justice or other magistrate as therein mentioned, should forfeit and pay a sum not less than 5*l.* nor more than 10*l.* for every such offence; and in case of non-payment, every such justice or magistrate above-mentioned were thereby authorized to commit such offender to the common gaol or house of correction for the county, riding, city, town, division, or place where such offence should have been committed, there to remain without bail or mainprize for any time not exceeding six months nor less than three months, at the discretion of the justice or other magistrate above-mentioned, by or before whom any such offender should be convicted: and whereas it is expedient to extend the powers given by the said recited act; it is therefore further enacted, that if the coachman, guard, or other person having the care of any such coach, mail coach, or other carriage or vehicle as aforesaid, or employed in, upon, or about the same, shall, by intoxication, or wanton and furious driving, or any other wilful misconduct on the public highway, injure or endanger any person or persons whatever in his, her, or their life or lives, limbs, or property, every such coachman or person as aforesaid so offending, shall for every such offence be liable to the same or the like fine or penalty, to be levied, mitigated, and applied in the same or the like manner as in and by the said recited act was mentioned and provided with respect to the offences therein specified: provided that nothing in this act contained shall extend to or be construed to extend to affect hackney coaches or chariots, or their owners or drivers respectively, duly licensed by the commissioners of hackney coaches. § 11.

And whereas in cases where such carriages or other vehicles are employed for the conveyance of passengers and goods between places lying distant from each other, it usually happens that the property in such carriages or other vehicles is in several persons, who reside at different points of the line of journey performed by such carriage or other vehicle, and the residence of some of whom is at a great distance from some of the places through which such carriage or other vehicle passes, or at which it arrives, and by reason of such distance such last-mentioned proprietor or proprietors have not the means of exercising the same superintendance and controul over the management of such carriage or other vehicle, in distant parts of its journeys, as such of the proprietor or proprietors as have their residence nearer thereto: and whereas it is expedient, that in all cases of informations and convictions for offences against this act or any former act, such information



and conviction should be had and laid against such one or more of the owner or owners, proprietor or proprietors of such carriages or other vehicles, as are resident nearest to the place where the offence shall be committed; it is therefore enacted, that from and after the passing of this act, all summonses, informations, and convictions, which shall be issued, laid, or prosecuted against any owner or owners, proprietor or proprietors of any coach, carriage, or other vehicle, under or by virtue of this act, or any former act, for the recovery of any fine or penalty hereby or thereby imposed, shall, in all cases in which such owners or proprietors shall reside in different counties (the residence of such owner or proprietor being ascertained by the entry at the stamp office, or other place from which the licence to such owner or proprietor was issued,) be so issued, laid, or prosecuted against such one or more of the said owners or proprietors as shall reside in the county or place in which, or nearest to which the offence proceeded against shall have been or shall be alleged to have been committed; and that in all such cases as aforesaid, this present act shall and may be allowed and pleaded in bar to the conviction of any such owner or owners, proprietor or proprietors as aforesaid, other than and except of such owner or owners, proprietor or proprietors, whose residence shall be in the county or place in which, or nearest to which the offence so proceeded against shall have been or shall be alleged to have been committed. § 12.

And difficulties having arisen in proceedings for penalties under the 1 Geo. I. c. 57. intituled, "*An act for better regulating hackney coaches, carts, drays, and waggons, within the cities of London and Westminster, and the weekly bills of mortality; and for preventing mischiefs occasioned by the drivers riding upon such carts, drays, cars, and waggons,*" by reason of the person or persons giving information being unable to prove the payment of the fare paid or to be paid by any person or persons carried in or upon any coach or other carriage used for the purpose of conveying passengers for hire; it is enacted and declared, that from and after the passing of this act, in all cases where any coach or other carriage used for the purpose of conveying passengers for hire, shall take up any passenger or passengers after such coach or other carriage shall have entered the paved streets of London, Westminster, or the borough of Southwark, and shall carry and convey such passenger or passengers along the said paved streets, or any of them, the proprietor of such coach or carriage, or the driver thereof, shall be deemed and taken to be a person standing, driving, and plying for hire within the meaning of that act, unless the contrary shall be shown. § 13.

Licences now in force are to continue till the 31st of August, 1822; and all licences to be granted at any time after the passing of this act, and before the 1st of August, 1823, shall terminate and expire on the 31st of July in that year. § 14.

And it is further enacted, that all the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties,

contained in and imposed by the several acts of parliament, or any of them, relating to the duties upon stage coaches, or other carriages used for the purpose of conveying passengers for hire, shall be of full force and effect with respect to the duties hereby granted, as far as the same are or shall be applicable, in all cases not hereby expressly provided for; and shall be observed, applied, enforced, and put in execution for the raising, levying, collecting, and securing the duties on carriages or vehicles kept, used, employed, or let out for hire, for the purpose of conveying passengers as aforesaid, granted by the said act of the fifty-fifth year of the reign of his said late majesty and the schedules thereto; and the said duties hereby granted, so far as the said acts of parliament, or any of them, shall not be repealed or be superseded by, and shall be consistent with the express provisions of this act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted with reference to the said duties granted by the 55 Geo. III. and the said schedule thereto, and also to the duties hereby granted. § 15.

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SMUGGLING. 3 Geo. IV. c. 110.

By this act, so much of the 57 Geo. III. c. 87. as respects the punishment of persons convicted of smuggling, either as to paying penalties, or in certain cases being ordered to serve in the navy, is repealed. And, from and after the passing of this act, it shall and may be lawful, in and throughout the United Kingdom of Great Britain and Ireland, to and for any justice or justices of the peace before whom any person liable to be arrested, and arrested under any of the acts made for the prevention of smuggling, shall be carried, on the confession of such person of the offence or offences for which he shall be so detained, and with which he shall be charged in any information or complaint, then and there exhibited or made by any officer of customs or excise, or any other officer or person employed for the prevention of smuggling, against him, or on proof thereof upon the oath of one or more credible witness or witnesses, to convict in the forms or to the effect specified in the schedule hereto annexed, such person of such offence or offences; and every such person so convicted as aforesaid, who shall not be a seaman or seafaring man, or being such seaman or seafaring man shall not be fit and able to serve his majesty in his naval service, shall immediately, upon such conviction, pay into the hands of such officer the penalty of 100*l.* for every such offence of which he shall be so convicted as aforesaid, or in default thereof, the said justice or justices shall, and he and they is and are hereby respectively authorized and required, by warrant under his and their hand and seal, or hands and seals, to commit such person so convicted as aforesaid, and making such default as aforesaid, to any gaol or prison or house of correction, there to remain until every such penalty for every such



offence of which he shall be so convicted shall be paid; and if the person so convicted as aforesaid shall be a seaman or seafaring man, and fit and able to serve his majesty in his naval service, and liable, under the said act, for the offence or offences of which he shall be so convicted as aforesaid, to be impressed into such service, and shall not prove that he is not a subject of his majesty, it shall and may be lawful for any such officer or person as aforesaid, and he and they is and are hereby required, upon such conviction of such person as aforesaid, to carry or convey or cause to be carried or conveyed, such person on board of any of his majesty's ships, in order to his serving his majesty in his naval service; and if such person shall, at any time or times after such conviction as aforesaid, and before the expiration of five years from the time of such conviction, by any means escape or desert from such custody or service respectively, so as not to complete the service of five years in his majesty's navy, according to the true intent and meaning of this act, he shall, over and above all punishment to which he shall be subject for desertion, be liable to be at any time or times afterwards again arrested and delivered over as aforesaid: provided always, that if it shall be made appear to any such justice or justices, that convenient arrangements cannot be at once made for carrying or conveying such seamen or seafaring man, so convicted as aforesaid, on board any of his majesty's ships, in order to serve his majesty, it shall and may be lawful for any such justice or justices, and he or they are hereby required, to commit any such seaman or seafaring man so convicted as aforesaid, to any prison or gaol, there to remain in safe custody for any period not exceeding one month, in order that time may be given to make arrangements for so conveying such seamen or seafaring man on board any of his majesty's ships as aforesaid; provided always, that the commissiouners of his majesty's treasury, or any three or more of them, shall have full power and authority to remit or mitigate any such penalty, punishment, or service as aforesaid, whether the parties shall be seafaring men or otherwise: provided that no justice or justices shall accept or receive any bail for any person liable to be arrested, and arrested as aforesaid. § 1.

And whereas it is expedient to remove all doubts upon the construction of the 24 Geo. III. imposing penalties upon persons hoisting on board any vessel for colours or flags used in the royal navy, it is therefore enacted and declared, that from and after the passing of this act, it shall not be lawful for any of his majesty's subjects whomsoever to hoist, carry, or wear in or on board any ship, vessel, or fishing boat, or any other vessel or boat whatever, whether merchant or otherwise, belonging to any of his majesty's subjects, his majesty's jack, commonly called the Union Jack, or any pendant, or any such colours as are usually worn by his majesty's ships, or any flag, jack, pendant, or colours whatever, made in imitation of or resembling those of his majesty, or any kind of pendant whatsoever, or any ensign or colours whatever, other

than those prescribed by his late majesty's proclamation, dated January 1st, 1801; and that if any person or persons shall nevertheless presume to hoist, carry, or wear in or on board any ship or vessel, fishing boat, or other vessel or boat whatsoever, belonging to any of his majesty's subjects, whether the same be merchant or otherwise, his majesty's jack, commonly called the Union Jack, or any pendant or colours such as are commonly worn by his majesty's ships, or any jack, flag, pendant or colours whatever, made in imitation of or resembling those of his majesty, or any kind of pendant whatever, without warrant, or any other ensign or colours than the ensign or colours prescribed by the said proclamation to be worn, then and in every such case the master or other person having charge of such ship, vessel, or boat, or the owner or owners thereof, being on board the same, and every other person so offending, shall for every such offence forfeit and pay the sum of 500*l.* to be recovered with costs of suit, either in the high court of admiralty, or in any of his majesty's courts of king's bench or exchequer at Westminster or Dublin, or in the courts of session or exchequer in Scotland respectively; and that it shall be lawful for any officer of his majesty's navy, customs, or excise, to enter on board any ship, vessel, or boat so hoisting, wearing, or carrying any jack, flag, ensign, pendant, or colours prohibited by the said proclamation and by this act to be hoisted, worn, or carried, and to seize and take away the same; and the same shall thereupon become forfeited. § 2.

And it being expedient that all seizures of spirits and other goods, made by officers of the customs, or by persons acting under the orders or directions of the commissioners of his majesty's customs, should be delivered into the custody of the persons authorized by the said commissioners to receive the same, in order to their prosecution and condemnation by the said commissioners, agreeably to the provisions and directions of the 45 Geo. III. and 47 Geo. III. for the more effectual prevention of smuggling; it is therefore enacted, that every seizure made by any officer or officers of his majesty's customs, or person or persons acting under the orders or directions of the said commissioners, shall, together with the ships and other vessels, carts, and other carriages, horses and other cattle seized therewith, or on account thereof, to be delivered over to and lodged and secured under the provisions of the said acts, and be disposed of or prosecuted for condemnation by order and under the directions of the said commissioners of customs; and that such commissioners shall and are hereby authorized to direct and pay all rewards for the making of every such seizure, and of all costs and expences relating thereto, in the manner directed by the several laws in force for the prevention of smuggling. § 3.

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INSOLVENT DEBTORS. 3 Geo. IV. c. 123.

Whereas it is expedient to amend the act of the 1 Geo. IV.



c. 119. intituled, "*An act for the relief of insolvent debtors in England, &c.*" it is therefore enacted, that it shall be lawful for the provisional assignee of the Court for Relief of Insolvent Debtors, to take possession himself, or by means of a messenger of the said court, or other person appointed by him, of all the real and personal estate and effects of every such prisoner as shall subscribe such petition, and execute such conveyance and assignment, as in the said act mentioned; and, if the court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof, and, if the court shall so order, of the real estate of such prisoner, according to the provision and for the purposes of the said act, and out of the proceeds to defray, in the first place, all such costs and expences of taking possession of and selling the same, as shall be allowed by the said court. § 1.

The provisional assignee may sue in his own name for the recovery, obtaining, and enforcing any estate, debts, effects, or rights of any such prisoner; and in case of the dismissal of the petition of any such prisoner praying for his discharge, all his acts done before the dismissal of such petition shall be valid. § 2.

And whereas it is enacted by the said act, that when the court shall adjudge any prisoner to be entitled to his discharge, such court shall appoint a proper person or persons to be assignee or assignees of the estate and effects of such prisoner, for the purposes of the said act; it is hereby further enacted, that it shall be lawful for the said court, as often as it shall see cause, for the better preserving and securing the property of any prisoner, to appoint, at any time after the filing of such prisoner's petition, and before the said court shall adjudge him entitled to his discharge, as well as after such adjudication, one or more assignee or assignees of the estate and effects of such prisoner, for the purposes aforesaid; and when such last-mentioned assignee or assignees shall have signified to the said court his or their acceptance of the appointment, such prisoner's estate, effects, rights, and powers vested in the provisional assignee as aforesaid, shall immediately be assigned to such last-mentioned assignee or assignees, in trust, for the benefit of the creditors, in proportion to their respective debts, according to the provisions of the said act; and such assignee or assignees, at any time appointed, shall have the same powers, authorities, rights, and duties, and shall be subject to all the duties, liabilities, and punishments, given by this or the said act with respect to the provisional or other assignee or assignees of any prisoner; and in all cases after assignment by the provisional assignee, all the estate and effects of such prisoner shall be, to all intents and purposes, as effectually and legally vested by relation in all and every such assignee or assignees, as if the first assignment had been made by such prisoner to him or them. But no act done under or by virtue of such first assignment shall be thereby rendered void or defeated, but shall remain as valid as if no such relation had taken place. § 3.

From and after the passing of this act, in all cases in which any assignee or assignees of any insolvent's estates shall wilfully retain in his or their hands, or otherwise employ for his or their own benefit, any sum or sums of money part of the estates of such insolvent, the said court shall have full power and authority to order such assignee or assignees to be charged to his or their accounts with the estates of such insolvents with such sum or sums of money as shall be equal to the amount of interest computed at a rate not exceeding *20l. per centum per annum*, on all sums of money appearing to the said court to be so obtained or employed by him or them, for the time or times during which he or they shall have so retained or employed the same; and the said court shall, in pursuance of such order, charge such assignee or assignees in their accounts with such sum or sums of money accordingly. § 4.

And it is further enacted, that the said court, or the justices acting under the authority of the said recited act, shall have the same power to examine into all debts in the prisoner's schedule, whether the same shall be therein stated to be admitted or disputed, or to be admitted in part and disputed in part, it is enacted by the said recited act as to the debts stated to be admitted therein; and shall also have power to inquire whether any of such debts have been improperly admitted or improperly disputed by the prisoner with any fraudulent intent. § 5.

And it is further enacted, that in the adjudication of the said court that any prisoner is entitled to the benefit of the said act, and the order thereon, it shall not be necessary to specify the several creditors, and persons claiming to be creditors of such prisoner, as required by the said act, but it shall be sufficient, if the said court shall think fit, to refer in such order to the schedule of such prisoner as specifying such creditors, or persons claiming to be creditors of such prisoner, as to whom the said court shall adjudge the said prisoner to be entitled to the benefit and protection of the act, and to be discharged forthwith; and that in all cases where it shall appear to the said court, that any prisoner shall have done or committed any act for which the said court is by the said act authorized to order that such prisoner shall not be discharged out of custody by virtue of the said act, or receive or be entitled to any protection, until he or she shall have been in custody at the suit of some one or more of the persons who were creditors at the time of petitioning the said court, or had since become creditors in respect of debts then growing due, and from whose claims he or she shall be discharged by the judgment of the said court, for a period or periods not exceeding three years in the whole, the said court may adjudicate thereon in the words of the said act, without naming any such one or more creditor or creditors in such adjudication; and thereupon the said insolvent shall, under such adjudication, be subject and liable to be detained in prison by his or her then detaining creditor or creditors, and to be arrested or charged in custody by



any of the other creditors in his or her schedule, until he or she shall have been in custody for such period or periods in the whole as shall be specified in such adjudication. § 6.

The court may order expences of reference to be paid out of the first proceeds, and the prisoner or prisoners to attend, if required, in matters of reference; the fee to the keeper of the prisoner, or his deputy, to be 10*s.* to be paid by the parties requiring the reference: any false swearing under the reference to be punished as wilful and corrupt perjury: and the keeper of any prison shall be required or compelled to carry any prisoner a greater distance than two miles from his prison, to or before any officer or examiner; except that the keepers of prisons in Middlesex or London, and of the prisons of the King's Bench and Marshalsea, and in Horsemonger Lane, and of and in the borough of Southwark in the county of Surrey, shall carry their prisoners before such officer at the office of the said court, or at such other place within the bills of mortality as the said court shall direct. § 7.

The court may order prisoners to be confined within the walls, if it see proper. § 8.

The justices at the quarter sessions are empowered to remand a prisoner who refuses to be sworn, or to answer proper questions put to him; and the justices shall have the same powers to compel the attendance of witnesses and the production of papers, for the purposes of the said act or this act, as now are possessed by any of the superior courts at Westminster; and the clerk of the peace, who is hereby authorized to issue such subpoenas as may be requisite, and in each of which the names of not more than four persons shall be inserted, for each subpoena shall receive from the person requiring the same the sum of 2*s.* 6*d.* and no more: provided always, that nothing herein contained shall extend to the compelling of the attendance of any witness, unless the party on whose behalf such witness shall be required to attend, shall have previously tendered such allowance for expences for his attendance, as in the judgment of the said court, or of the said justices at the general or quarter or adjourned sessions, shall appear to be reasonable. § 9.

And it is further enacted, that where it shall appear to the satisfaction of the court, that any prisoner in actual custody, or arrested within the counties of Middlesex or Surrey, or the city of London, had, at or immediately before such arrest, his usual place of abode in some other county or place, and had been arrested in the said counties of Middlesex or Surrey, or in the said city of London, it shall and may be lawful for the said court to receive affidavits of any creditor or creditors, or of any other person or persons not resident within the said counties of Middlesex and Surrey, or the city of London, in opposition to the discharge of such prisoner under the said act, and, if the said court shall think fit, to permit interrogatories to be filed, for the examination or cross-examination of any person making or joining in such affidavit, and also to stay the discharge of every such prisoner, until

such interrogatories shall be fully answered to the satisfaction of the said court, or until the expiration of six weeks from the filing of such interrogatories. § 10.

And it is further enacted, that no prisoner who shall have petitioned the court for relief under and by virtue of the said act, shall be discharged out of custody as to any action, suit, or process, in or by which he or she shall be charged or detained in custody, for any debt or damages which are or shall be admitted by such prisoner in his or her schedule filed in the said court under the said act, or which shall be disputed therein only as to the amount of such debt or damages, by or by virtue of any supersedeas, judgment of non-pros, or judgment as in the case of a nonsuit, for want of the plaintiff or plaintiffs in such action, suit, or process proceeding therein. § 11.

And it is further enacted, that if any married woman being a prisoner within the intent and meaning of the said act, shall petition to be discharged from any debt or debts under the provisions of the said act, it shall be lawful for the said court to receive such petition without requiring such married woman to execute a conveyance or assignment, or warrant, according to the provisions of the said act; but, instead thereof, that the said court shall require such married woman to execute a conveyance and assignment for vesting in such provisional assignee as aforesaid all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition notwithstanding her coverture, or which shall be vested in any trustees or trustee or other persons or person for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession, except her wearing apparel, bedding, and other such necessaries, not exceeding in the whole the sum of 20*l.* and also all other real and personal estate and effects to which she shall be entitled in any manner whatsoever, in possession, remainder, or reversion, subject only to such right, title, or interest as her husband may have therein; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any rights of her husband in such real and personal estate and effects respectively: and all such estate and effects, real and personal, in possession, reversion, or remainder, shall, by such conveyance and assignment so to be executed under the order of the said court, be as effectually vested in such provisional assignee as aforesaid, as the same might have been vested in such assignee by the conveyance or assignment of such woman if she had been sole and unmarried, subject only to the right of her husband therein as aforesaid; and all provisions in the said act or in this act contained, touching the real and personal estate of any prisoner seeking to be discharged under the authority of the said act, shall apply to such real and personal estate and effects respectively, in the same manner as the same would apply to such personal estate and effects if such woman had been sole and unmarried, subject



only to the rights of her husband therein: and such married woman shall also execute a warrant of attorney to confess judgment in one of the superior courts aforesaid, for the amount of the debts remaining unpaid, for which she shall be discharged under the authority of the said act as aforesaid; and such warrant of attorney so executed shall be sufficient authority for entering up judgment against such woman accordingly, notwithstanding her coverture; but such judgment shall not in any manner prejudice or affect the rights of her husband, except that the same shall be deemed and taken to be her debt in case she shall die in the lifetime of such husband, to the end that the same may be discharged out of her personal assets in a due course of administration, or out of her real estate, if any she shall have at the time of her death, but without prejudice to any estate or interest of her husband therein as tenant by the curtesy; and in case such woman shall, during the life-time of her husband, become entitled to any property for her separate use, such judgment may be enforced against such separate property, by suit in equity, or otherwise, under the order of the said court, for the purpose of obtaining payment of so much of the debts from which such woman shall have been discharged by such court as shall then remain unpaid: and in case such woman shall survive her said husband, such judgment may be after his death enforced against such woman or her property, real and personal, in such and the same manner and with the same effect as it might have been if she had been sole and unmarried at the time she executed such warrant to confess judgment, and at the time when such judgment shall have been entered up as aforesaid: provided always nevertheless, that the discharge of any married woman under the authority of the said act or of this act, shall not operate to discharge her husband from any debt from which his wife shall be so discharged; but such debt, so far as the same shall remain unpaid or unsatisfied, shall be chargeable upon and in force against such husband, as fully, to all intents and purposes, as if his wife had not obtained such discharge. § 12.

Prisoners obtaining discharge shall be discharged against any creditor for any sum payable at a future time. § 13.

And whereas by the said act the said court is authorized in certain cases, upon the application of any creditor of a prisoner, to direct such prisoner after his discharge to be brought again before them, and upon due notice to be given by such creditor, to re-hear the matter, and make such further order as to them shall seem fit, in execution of the powers in the said recited act contained; it is further enacted, that where in any such case the insolvent after his discharge shall refuse or neglect to appear before the said court, or before the justices at their general, quarter, or adjourned sessions, when the said court shall direct the matter to be re-heard before such justices, who are hereby authorized to re-hear the same, and to make such further order as to them shall seem fit, in execution of the powers in the said recited act

contained, on the day and at the time specified in any rule of the said court, a copy whereof shall have been duly served on such insolvent, it shall and may be lawful for the said court to order the said insolvent to be apprehended and remanded into custody, in such prison as the said court shall direct, and to issue their warrant accordingly, and to cause him to be brought up for examination as often as to the said court or the said justices shall seem fit. § 14.

And it is further enacted, that if any prisoner shall have been adjudged and ordered by the court to be discharged from custody after a certain period, or not to be discharged out of custody, or receive or be entitled to any protection under the said act, until he shall have been in custody at the suit of a certain creditor or creditors in such order named, for a certain period therein mentioned, and the said court shall see good and sufficient cause to believe that such adjudication or order has been obtained on false evidence, or otherwise fraudulently obtained or improperly made, it shall and may be lawful for the said court to direct such prisoner to be brought again before them, and upon due notice to be given to the creditor or creditors named in the said order, to re-hear the said matter, and set aside the said adjudication and order, if they shall see cause, and to make such further order as to them shall seem fit, in execution of the powers in the said recited act contained. § 15.

Any attorney or agent removed from the files of the court and afterwards practising, shall be guilty of a contempt, and liable to fine and imprisonment. § 16.

And all affidavits to be used before the said court, or any commissioner thereof, or any justices of the peace, or any officer of the said court, to whom a reference shall be made by the said court, or any examiner appointed under the said act, shall and may be sworn before the said court, or any commissioner thereof, or any commissioner appointed by the said court for the purpose of taking affidavits, or any master extraordinary in chancery, or commissioner for taking affidavits in any of the superior courts of Westminster Hall, or, in Scotland or Ireland, before a magistrate of the county, division, city, town, or place, where the affidavit shall be sworn. § 17.

All estates, &c. of insane persons are to be vested, on their discharge, in provisional or other assignees, the same as if they were of sound mind; and every assignment hitherto made in such case by the court, is and shall be good and effectual to all intents and purposes; and it shall be lawful for the said court to order judgment to be entered up against such prisoner, in the same manner as if he or she had been of sound mind, and had executed a warrant of attorney to authorize the entering up of such judgment, in the manner by the said recited act provided. § 18.

And when any assignment shall be avoided by a commission of bankrupt being issued against any prisoner, no action or suit shall be commenced for any thing done under or by virtue of the said



assignment, except to recover any property, estate, money, or effects of the said bankrupt, detained after demand thereof. § 19.

The court may invest in the public funds, &c. unclaimed money, and apply the interest towards expences of the court. § 20.

After the court is built in Portugal Street, all matters are to be heard there, unless the court think proper to adjourn to any other place; and the keepers of the several prisons, or their deputies, shall be entitled to receive the sum of 3s. and no more from each prisoner, for carrying him before the said court, on the hearing of the matter of his petition and schedule. § 21.

And it is further enacted, that in all rules, orders, warrants, and other proceedings of the court, under the said act or this act, or any act for the relief of insolvent debtors, it shall be sufficient to set forth such rule, order, or warrant, or in case of a warrant for the apprehension or detection of any person, for a contempt in disobeying any order or rule of the said court, or for the apprehension or detention of any person for the appearance of such person before the said court, or for the enforcing any rule or order of the said court, it shall be sufficient to set forth such rule or order, and the warrant thereon, and that the insolvent in any order, rule, warrant, or other proceeding mentioned, has been duly discharged under the said act or this act, or some other act for the relief of insolvent debtors, if he has been discharged, or if he has not been discharged, that the prisoner has applied by petition to the said court for his or her discharge from confinement, according to the provisions of the said acts, without setting forth in any such order, rule, warrant, or other proceeding, the petition, conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or the schedule, balance sheet, order for hearing, adjudication, order for discharge, or any other rule, order, or proceeding of or in the said court, or any part thereof, except as aforesaid. § 22.

And from and after the expiration of six weeks from the last day of Trinity term until the 1st day of November in every year during the continuance of the said act and this act, the said court shall have full power and authority to regulate and appoint the sittings of the said court at such times as to the commissioners of the said court shall appear fit and necessary for the due administration of justice in the said court: provided always, that no adjournment of the said court shall be at any time for more than six weeks. § 23.

In every information and indictment for omitting any property from schedule, or for aiding therein, it shall be sufficient to set out the substance of the offence charged, without setting forth the petition, or conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or balance sheet, order for hearing, adjudication, order for discharge or remand, or any warrant, rule, order, or proceeding of or in the said court, except so much of his schedule as may be necessary for that purpose. § 24.

## TO RENDER VALID CERTAIN MARRIAGES.

4 Geo. IV. c. 5.

By this act it is recited, that whereas by the 3 Geo. IV. c. 75. intituled, "*An act to amend certain provisions of the 26 Geo. II. for the better preventing of clandestine marriages,*" it is amongst other things enacted, that no person shall, from and after the passing of this act, be deemed authorized by law to grant any licence for the solemnization of any marriage, except the archbishops of Canterbury and York, according to the rights now vested in them, and except the several other bishops within their respective dioceses, for the marriage of persons, one of whom shall be resident at the time within the diocese of the bishop in whose name such licence shall be granted: and whereas, notwithstanding such enactment, divers licences for marriage have, through error, been granted since the passing of the said act by or in the name of bodies corporate or persons, their officers or surrogates, other than the said archbishops and bishops, which bodies corporate or persons, their officers or surrogates, before the passing of the said act, were or were deemed to be authorized by law to grant such licences; and divers persons have been married by virtue or in consequence of licences so granted, the validity of which marriages is affected by the enactment aforesaid: it is therefore enacted, that all and every marriages and marriage solemnized by virtue or in consequence of a licence granted after the passing of the said act of the 3 Geo. IV. and before the passing of this act, by or in the name of a body corporate or person, his or their officer or surrogate, other than the archbishops of Canterbury and York, according to the rights vested in them respectively, or the several other bishops within their respective dioceses, which body corporate or person, his or their officers and surrogates, before the passing of the said act, were or were deemed to be authorized by law to grant such licences, shall be as good and valid marriages to all intents and purposes whatsoever, as the same would have been if the said enactment, restraining the power and authority of granting such licences, had not been made. § 1.

And it is further enacted, that such bodies corporate and persons as aforesaid, their officers and surrogates, who have granted such licences as aforesaid since the passing of the said act, and their officers and others concerned therein, and such ministers as have acted under the authority of the same, shall not be or be held to be liable to any pains or penalties, or censures respectively, for or on account of the granting or acting under the same.

## REPEAL OF PART OF THE ASSESSED TAXES.

4 Geo. IV. c. 11.

By this act it is enacted, that from and after the 5th day of April, 1823, in that part of Great Britain called England, Wales,



and the town of Berwick-upon-Tweed ; and from and after the 24th day of May, 1823, in that part of Great Britain called Scotland ; for and in respect of and upon all assessments to be made for any year commencing from the respective days and year last aforesaid, so much of the duties on windows or lights in shops or warehouses being parts of dwelling-houses, in respect of any number not exceeding three such windows or lights in any shop or warehouse, in the front or fronts and on the ground or basement story of every dwelling-house occupied by any person or persons in trade, who shall expose to sale or sell any goods, wares, or merchandize in any such shop or warehouse ; and also the whole of the duties on gardeners, and on servants in husbandry or trade, and on taxed carts, and on horses, mares, geldings, or mules, and all assessments thereon for and in respect of any year commencing from and after the respective days aforesaid, shall severally cease and determine. § 1.

And whereas it is also expedient to reduce such of the several duties of assessed taxes granted to his majesty on windows or lights, and on male servants, male persons, carriages and horses respectively hereinafter described, as are not wholly repealed by this act ; it is further enacted, that one moiety and equal half part of each and every of the duties on windows or lights set forth in the schedule marked A. of the 48 Geo. III. ; and also one moiety and equal half part of each and every of the several duties on male servants and male persons respectively set forth in the respective schedules marked C. No. 1, No. 3, and No. 4, of the 48 and 52 Geo. III. and also one moiety and equal half part of each and every of the duties on carriages with four wheels, and of each and every of the duties on carriages with two wheels, respectively set forth in the respective schedules marked D. No. 1, No. 2, No. 3, and No. 4, of the 48 and 52 Geo. III. and also of the duties on carriages granted by schedule D. No. 2, of the 50 Geo. III. and also by the 58 Geo. III. c. 17. intituled, "*An act for charging certain duties on four-wheel carriages, constructed and drawn in the manner therein stated ;*" and also one moiety and equal half part of the duties made payable on all horses, mares, geldings, or mules respectively set forth in the respective schedules of the said acts of the 48 & 52 Geo. III. marked E. No. 1, No. 2, No. 3, and F. No. 1, ; also one moiety and equal half part of the duties on horses, mares, geldings, or mules, described in and granted by the 59 Geo. III. intituled, "*An act to continue two acts of the 56th and 58th years of his present majesty, for reducing the duties payable on horses used for the purposes therein mentioned, to the 5th day of April, 1821 ; and to reduce the duties chargeable under certain acts of the 48th and 52d years of his present majesty, in respect of certain horses, mares, geldings, and mules ;*" and which duties so reduced were made perpetual by the 1 & 2 Geo. IV. shall respectively cease and determine, and be no longer paid or payable : provided nevertheless, that the duties hereby reduced,

and to be hereafter assessed and payable, shall not include any fraction of one penny. § 2.

And whereas by the 1 & 2 Geo. IV. and the 3 Geo. IV. divers persons have compounded for their assessed taxes in Great Britain, under contracts of composition, which were made to continue in force on the said duties on windows or lights and on inhabited houses for the term of six years, and on the other duties of assessed taxes allowed to be compounded for under the said acts for the term of five years respectively, from the 5th day of April, 1822; and it is expedient to relieve the persons who have so compounded in respect of the said duties, as well those wholly as those in part repealed, as of the additional duties payable under the said acts on the amount of the duties compounded for, which are so wholly or in part repealed, upon all instalments payable on contracts after the period herein mentioned; it is further enacted, that it shall and may be lawful for the respective commissioners acting in the execution of the said acts and of this act, in their respective districts, to remit and deduct so much and such parts of the duties compounded for and included in any such contract as are repealed by this act, and also so much of the additional duty granted by the said acts, and payable by any such contract on the amount of any duty, or any portion of the duties so repealed, and to cause such reduced amounts to be inserted in the assessments of composition, and in the several duplicates thereof, to be delivered and returned by the said commissioners under the said acts in their respective districts, after the said 5th day of April, 1823, and during the periods of such respective compositions; and every such contract shall be of the same force and effect for the recovery and enforcing payment of the reduced instalments under the provisions of the said acts and of this act, to commence from the 5th day of April, 1823, to all intents as if the full amount of the instalments compounded for continued payable on such contracts. § 3.

No other duties shall be substituted in respect of the use or employment of occasional servants, taxed carts, and horses, heretofore chargeable with the duties repealed by this act. § 4.

And so much of the acts requiring the names of the owners, the price, and other particulars to be marked on taxed carts, and other carriages, are repealed; and it shall be lawful for any person or persons keeping and using any horse, mare, gelding, or mule, *bona fide* for purposes of husbandry, to use any such horse, mare, gelding, or mule, in drawing any carriage of the description of a taxed cart, the duty whereon is repealed by this act, and kept by any such person respectively for his, her, or their own use, free of any duty in respect of any such horse, mare, gelding, or mule, in and by any assessment to be made for any year commencing from and after the said 5th day of April, 1823. § 4.

And it is further enacted, that the powers and provisions of the 59 Geo. III. for giving relief from the duties charged on shopmen



to every male person wholly maintained and lodged in the house of his employer or employers, such persons respectively being under the age of fifteen years, shall, upon every assessment made or to be made after the 5th day of April, 1823, be extended to all and every such male person described in the said act, being respectively under the age of eighteen years. § 5.

And it is further enacted, that in case any person, who having compounded in respect of a carriage with two wheels, shall be desirous, during the year commencing on the 5th day of April, 1823, of discontinuing to keep the same, and of substituting a carriage with four wheels in lieu thereof, it shall be lawful so to do, on giving notice to the surveyor of the said duties acting for the district in which such person shall reside, within six calendar months after the passing of this act, on payment of the difference of duty so compounded for on a two-wheeled carriage, and reduced by this act, and the duty chargeable by the former act; and also reduced by this act, on a four-wheeled carriage, together with the duty of *5l. per centum* on such difference, to be indorsed by certificate on every such contract of composition by any two of the commissioners acting in the execution of the same acts in the district in which such contract shall have been entered into, and to be made payable from and after the 5th day of April, 1823, by half-yearly instalments, during the continuance of the said contract; and which additional payments shall be enforced in like manner as if they were originally inserted in every such contract: and any person seeking the benefit of this provision, shall and may, during the continuance of his or her said composition, keep and use any four-wheeled carriage free of duty. § 6.

Copies of all tax-office cases determined by the judges to be annually laid before parliament. § 7.

And whereas by the 48 Geo. III. under the schedule thereto marked A. there is charged for the windows in every dwelling-house in England and Wales, and Berwick-upon-Tweed, having not more than six windows or lights therein, a duty of *6s. 6d.* and for every such dwelling-house in Scotland a like duty of *4s. 6d.* (such houses respectively not being worth the rent of *5l.* by the year), and which duties are reduced by the provisions of this act; and it is expedient to exempt the occupiers of such houses in certain cases from the said reduced duties; it is further enacted, that upon any assessment of the said duties to be made upon the occupier of any such dwelling-house, for any year commencing from or after the 5th of April, 1823, it shall be lawful for the respective commissioners acting in the execution of the said acts and of this act, in their respective districts, to grant relief to any such occupier having three children born in lawful wedlock, and wholly maintained by him or her, and at his or her expence, and to strike out the charge on any such occupier, on the proof by the rules and in the manner authorized and required by the said acts in cases of exemption from the said duties by reason of poverty. § 8.

By the 9th section, powers granted to commissioners and officers under former acts are to extend to this act.

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MARRIAGE. 4 Geo. IV. c. 17.

By this act it is recited, that whereas by an act of the 3 Geo. IV. c. 76. intituled, "*An act to amend certain provisions of the 26 Geo. II. for the better preventing of clandestine marriages,*" it is amongst other things enacted, that no licence for any marriage shall, from and after the 1st of September, 1822, be granted by any person having authority to grant the same, until oath shall have been made by the persons, and to the effect required by the said act; and whereas inconveniences have been found to arise from such provision, and from certain other provisions of the said act contained in that part of the said act which is subsequent to such hereinbefore recited provision; and whereas it is expedient to repeal such provisions, and to the intent that, until it shall be otherwise provided by parliament, marriages, whether solemnized by licence, or after publication of banns, may, save as hereinafter provided, be regulated by the provisions of the 26 Geo. II. c. 33. as before the passing of the 3 Geo. IV. it is therefore enacted, That, from and after the passing of this act, the hereinbefore recited provision of the said act, and all and every the enactments and provisions contained in that part of the said act which is subsequent to such hereinbefore recited provision, shall be and the same are hereby repealed; and that licences shall and may be granted by the same persons, and in the same manner and form, and in the case of minors with the same consent, and banns be published in the same manner and form, as they were respectively regulated by the 26 Geo. II. § 1.

And whereas it may happen, that, after the passing of this act, marriages may be solemnized according to the provisions of the said recited act of his present majesty; it is therefore enacted, that all marriages which have been or shall be solemnized under licences granted or banns published conformably to the provisions of the said recited act of his present majesty, shall be good and valid: provided always, that no marriage solemnized under any licence granted in the form and manner prescribed by either of the said recited acts, shall be deemed invalid on account of want of consent of any parent or guardian.

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MASTERS AND SERVANTS. 4 Geo. IV. c. 34.

This act recites that, whereas the 20 Geo. II. c. 19. was passed, intituled, "*An act for the better adjusting and more easy recovery of the wages of certain servants, and for the better regulation of such servants, and of certain apprentices;*" and also the 6 Geo. III. c. 25. intituled, "*An act for better regulating apprentices, and*



persons working under contract ;" and also the 4 Geo. IV. c. 29. intituled, " *An act to increase the power of magistrates in cases of apprenticeships ;*" and it is expedient to extend the powers of the said acts: it is therefore enacted, that it shall and may be lawful, not only for any master or mistress, but also for his or her steward, manager, or agent, to make complaint upon oath against any apprentice, within the meaning of the said before-recited acts, to any justice of the peace of the county or place where such apprentice shall be employed, of or for any misdemeanor, misconduct, or ill behaviour of any such apprentice: or if such apprentice shall have absconded, it shall be lawful for any justice of the peace of the county or place where such apprentice shall be found, or where such apprentice shall have been employed, upon complaint thereof made upon oath by such master, mistress, steward, manager, or agent, to issue his warrant for apprehending every such apprentice ; and further, that it shall be lawful for any such justice to hear and determine the same complaint, or to punish the offender by abating the whole or any part of his or her wages, or otherwise by commitment to the house of correction, there to remain and be held to hard labour, for a reasonable time not exceeding three months. § 1.

And all complaints, differences, and disputes which shall arise between masters or mistresses and their apprentices, within the meaning of the said before-recited acts, or any of them, touching or concerning any wages, shall and may be heard and determined by one or more justice or justices of the peace of the county or place where such apprentice or apprentices shall be employed, which said justice or justices is and are hereby empowered to examine on oath any such master or mistress, apprentice or apprentices, or any witness or witnesses, touching any such complaint, difference, or dispute, and to summon such master or mistress, and to make such order for payment of so much wages as according to the terms of his, her, or their indentures of apprenticeship shall appear, under all the circumstances of the case, to be justly due, (provided that the sum in question do not exceed the sum of 10*l.*) the amount of such wages to be paid within such period as the said justice or justices shall think proper, and in case of a refusal or non-payment thereof, such justice and justices shall and may issue forth his and their warrant, to levy the same by distress and sale of goods and chattels, rendering the overplus to the owners, after payment of the charges. § 2.

And it is further enacted, that if any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person or persons whomsoever, to serve him, her, or them for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service according to his or her contract (such contract being in writing, and signed by the contracting parties,) or having entered into such service shall absent himself or herself from his or her service

before the term of his or her contract (whether such contract shall be in writing or not in writing) shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, then and in every such case it shall and may be lawful for any justice of the peace of the county or place, upon complaint thereof made upon oath, to issue his warrant for the apprehending every such servant in husbandry, &c. and to examine into the nature of the complaint; and if it shall appear to such justice that any such servant in husbandry, &c. shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanor as aforesaid, it shall and may be lawful to commit every such person to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months, and to abate a proportionable part of his or her wages, for and during such period as he or she shall be so confined in the house of correction, or in lieu thereof, to punish the offender by abating the whole or any part of his or her wages, or to discharge such servant from his or her contract, service, or employment, which discharge shall be given under the hand and seal of such justices *gratis*. § 3.

And it is further enacted, that it shall and may be lawful to and for any justice or justices of the county or place where such servant in husbandry, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice shall be employed, upon complaint touching or concerning the non-payment of his or her wages, to summon the steward, agent, bailiff, foreman, or manager, in the absence of the master, mistress, or employer, to be and appear before him or them, and to hear and determine the matter of complaint in such and the like manner as complaints of the like nature against any master, mistress, or employer, are directed to be heard and determined in and by this and the before-recited acts, and also to make an order for the payment by such steward, agent, bailiff, foreman, or manager, of so much wages as to such justice or justices shall appear to be justly due; provided, that the sum in question do not exceed the sum of 10*l.*; and in case of refusal or nonpayment of any sum so ordered to be paid for the space of twenty-one days from the date of such order, such justice or justices as aforesaid shall and may issue forth his or their warrant to levy the same by distress and sale of the goods and chattels of such master, mistress, or employer, rendering the overplus to the owner, or to such steward, agent, bailiff, foreman, or manager, for the use of such master, mistress, or employer, after payment of the charges of such distress and sale. § 4.

And every justice or justices of the peace before whom any complaint shall be made, in pursuance of the 20 Geo. II. c. 19. or of the 31 Geo. II. c. 11. intituled, "*An act to amend an act made in the third year of the reign of king William and queen Mary, intituled, 'An act for the better explanation and supplying*



*the defects of the former laws for the settlement of the poor, so far as the same relates to apprentices gaining a settlement by indenture; and also to empower justices of the peace to determine differences between masters and mistresses and their servants in husbandry, touching their wages, though such servants are hired for less time than a year,*" shall and may order the amount of the wages that shall appear due to any servant in husbandry, artificer, labourer, or other person named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper; and in case of refusal or nonpayment thereof, shall and may levy the same by distress and sale, in manner directed by the said first-mentioned act; and every order or determination of such justice or justices made under this act shall be final and conclusive. § 5.

Nothing in this act shall extend to impeach or lessen the jurisdiction of the chamberlain of the city of London, or of any other court within the said city, touching apprentices. § 6.

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#### COMPOSITION FOR ASSESSED TAXES.

4 Geo. IV. c. 45.

Whereas by the 1 & 2 Geo. IV. c. 113. intituled, "*An act to continue several acts for the relief of persons compounding for their Assessed Taxes from an annual assessment for a further term, and to amend the acts relating to assessments, and compositions of Assessed Taxes;*" and the 3 Geo. IV. c. 50. intituled, "*An act to extend the period allowed to persons compounding for their Assessed Taxes, and to give further relief in certain cases therein mentioned;*" all and every the persons therein described were authorized to compound for the duties on houses, windows, and lights, for the term of six years, and other assessed taxes therein enumerated, for the term of five years, to be respectively computed from the 5th April, 1822, on the terms and conditions and under the provisions contained in the said acts, on such persons giving the notices of his, her, or their intention to compound, required by the said acts, on or before certain days, which have since elapsed; and whereas it is expedient to extend the provisions of the said acts, for enabling persons now to enter into composition for the remainder of the periods therein limited, and which were unexpired on the 5th April, 1823, in the manner herein provided; it is therefore enacted, that from and after the passing of this act it shall be lawful for any person or persons who shall be duly assessed to the said rates and duties, for the year commencing the 5th April, 1823, and who shall give the notice of their intention to compound within the time and in the manner hereinafter provided, to compound for the rates and duties assessed on their dwelling-house for the term of five years, and for their other assessed taxes allowed to be compounded for by the said acts, and

therein particularly enumerated, for the term of four years respectively, to commence from the 5th of April, 1823, together with an additional annual duty of one shilling for every twenty shillings of the respective amounts so assessed, and so after that rate for any greater or lesser sum than twenty shillings; and the assessments so to be made and compounded for under this act, shall severally be and remain to the same annual amount for the respective periods last-mentioned, to all intents as if the said duties had been compounded for under the said acts. § 1.

By section 2. it is enacted, that persons intending to compound under this act, are to give the notice required by the former acts on or before the 1st September, 1823.

And whereas by reason of the repeal of the duties of assessed taxes in Ireland, persons who have entered into composition there, will, on their removal to Great Britain, lose the benefit of such compositions in regard to any increase of the articles so compounded for in Ireland; and it is expedient to give relief to such persons, by allowing them to compound under this act, according to the number and extent only of the articles compounded for in Ireland; it is therefore enacted, that in every case in which any person or persons having compounded in Ireland shall, on the occasion of their residence in Great Britain, be desirous of retaining the benefit of the same contract of composition entered into in Ireland, it shall be lawful for them so to do, and for that purpose to annex to the said notice of their intention to compound under this act, to be given within the period and in manner hereinbefore described, the original contract of composition entered into in Ireland, or a true copy thereof, duly authenticated by the proper officer in that behalf; and, on the receipt of such notice and contract, it shall be lawful for the respective commissioners acting in the execution of this act, to make an assessment of duty on every such person respectively, for the year commencing from the 5th April, 1823, according to the number only of the particular articles so included in the said contract of composition, and which shall be deemed and taken in such cases as a full assessment, for the purposes of composition, for the like description of articles under this act: provided nevertheless, that no such contract so to be entered into, and nothing herein contained, shall be construed to exempt any such persons last-mentioned from assessment during the continuance of their said composition, by reason of their residence in Great Britain, for and in respect of any articles kept and used, and chargeable with any duty under the said acts, of a description different from the duties compounded for in Ireland; but such persons respectively may, on giving notice of their intention in that behalf, in the manner hereinbefore directed, respectively compound under this act for such other articles, upon and according to a full and true return and assessment for the same, to be made for the said year, commencing as aforesaid, in the manner directed by this act in other cases of composition; and the whole of the duties so to be compounded



for, shall and may in such cases be included in one and the same contract. § 3.

Where persons having compounded remove to other districts, the compositions may be transferred and collected in the district of their actual residence, on certificate being made and signed by two commissioners to that effect; but all instalments and arrears arising within or prior to the year of removal must be paid in the district the person removes from. § 4.

On the transfer of the future payments of compositions to the assessment of the parish to which the removal shall take place, the commissioners of the district are to discharge the assessment therein. § 5.

The same provisions for transfer of composition to fresh places of residence are to be applied to all further removals by the same persons during the continuance of their compositions. § 6.

And it is further enacted, that where any person or persons having compounded under the said acts for a carriage with two wheels, shall have substituted a four-wheel carriage in lieu thereof, and have compounded for the same, and for payment of the difference of duty, under the power given for that purpose by an act passed in the last session of parliament, intituled, "*An act for repealing certain of the duties of Assessed Taxes, for reducing certain other of the said duties, and for relieving persons who have compounded for the same,*" it shall be lawful for every such person or persons to have and enjoy the same privileges during the continuance of their said contract, as they would have enjoyed under the said acts, if they respectively had originally compounded for a carriage with four wheels; and all persons who have compounded under the said acts, or who shall compound under this act, for a male servant or male servants chargeable with duty under Schedule (C.) Number 1, of the 52 Geo. III. may employ any male person or male persons, not being servants to such persons so compounding, as occasional waiters, or in any of the capacities enumerated in the said Schedule (C.) Number 1, free of any duty, provided such respective employments shall not exceed or extend beyond those allowed and defined by the rules contained in the Schedule marked (C.) Number 3, of the said last-mentioned act, in respect of such male persons last-mentioned; and all assessments made or to be made on such persons so compounding as last aforesaid, during the continuance of their composition, in respect of any such occasional waiters or male persons aforesaid, shall be null and void. § 7.

The commissioners and other officers acting under the former composition acts are to act in like manner in the execution of this act. § 8.

The provisions of former composition acts to remain in force, except so far as they are varied by this act. § 9.

And whereas doubts have arisen, whether, under the provisions of an act passed in the present session of parliament, intituled, "*An act for repealing certain of the duties of Assessed Taxes, for*

reducing certain other of the said duties, and for relieving persons who have compounded for the same," the duty of three shillings, theretofore chargeable under the schedule marked (F.) of the 52 Geo. III. therein described, for horses, mares, or geldings being under the height of thirteen hands, are wholly repealed, or reduced only; and it is reasonable and proper to remove such doubts; it is further enacted, that all and every the provisions in the said act contained, for repealing the several duties on three shillings, and of two shillings and ten-pence, and two-pence respectively, chargeable by the several acts therein recited for and in respect of horses, mares, geldings, or mules, shall be deemed and taken to extend to the repeal of the said duties of three shillings on all horses, mares, or geldings, under the height of thirteen hands in the said schedule (F.) described. § 10.

### FORM OF CONTRACT OF COMPOSITION.

*Under the Act of 4 Geo. IV.*

<p>Windows . . . . . No.            Rent . . . . . Amount</p> <p>Total Amount of Duty . . . .            Composition Duty of 5 per cent.</p> <p>Total Amount of Composition .</p>	<p>Amount of Duties.</p> <p>£. s. d.</p> <hr/> <hr/> <hr/> <hr/> <hr/>	<p>KNOW all men, That we, two of the Commissioners acting in the execution of the acts in relation to Assessed Taxes, for the division of . . . in the county of . . . have contracted and agreed with . . . of . . . in the said division, in pursuance of an act passed in the fourth year of George the Fourth, for the composition of Assessed Taxes, as stated in the margin hereof, and additional rate; which several amounts are to be paid to the Collectors of the said . . . or to the Collectors of any parish or place to which the said . . . shall remove, and to which any part of the said Composition shall thereupon be transferred, under the provision of the said act, by two instalments; <i>viz.</i></p>
<p><b>ESTABLISHMENT.</b></p> <p>No. . . . . Schedules</p> <p>Servants . . . . . C. No. 1.            Male Persons . . . . . C. No. 3.            Four-Wheel Carriages . . . . . D. No. 1.            Two-Wheel Carriages . . . . . D. No. 2.            Tax Carts . . . . . D. No. 4.            Horses for Riding . . . . . E. No. 1.            Race Horses . . . . . E. No. 3.            Dogs . . . . . G.            Hair Powder . . . . . I.            Armorial Bearings . . . . . K.</p> <p>Total amount of Duties . . . .            Composition duty of 5 per cent .</p> <p>Total Amount of Composition for }            Establishment . . . . . }            Do. for House . . . . . }</p> <p>Total Amount for Composition .</p>	<p>Amount of Duties.</p> <p>£. s. d.</p> <hr/> <hr/> <hr/> <hr/> <hr/>	<p>1st instalment, on or before the 10th day of October;            2nd instalment, on or before the 5th day of April;</p>



and so yearly, during the respective terms of five years and four years, from the 5th day of April, 1823, mentioned in the said act.

The condition of the above Composition is, that the above-named shall duly pay or cause to be paid to the Collectors for the said Compositions, or one of them, on or before the days above-mentioned, upon demand, the yearly sum of by two instalments in even portions, taking their or his receipt in writing for the same; otherwise the said Composition shall be levied on the goods and chattels of the said or sued for and recovered by any of the ways and means by which the moneys due on assessments may be sued for and recovered.

Witness,		} Commissioners of the } within divisions.
	Clerk.	
Witness,		} The Party hereto.
	Clerk.	

N.B. With the consent of the Commissioners, the collector of the parish may witness the signature of the party to the contract.

REPEAL FOR CERTAIN OFFENCES OF CAPITAL PUNISHMENTS. 4 Geo. IV. c. 46.

This act recites, that, whereas by the 6 Geo. II. c. 37. it is enacted, that if any person or persons shall unlawfully and maliciously break down or cut down the bank or banks of any river or any sea bank, whereby any lands shall be overflowed or damaged, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy: and whereas by the same act it is further enacted, that if any person or persons shall unlawfully and maliciously cut any hop binds growing on poles in any plantation of hops, every person or persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy: and whereas by the 27 Geo. II. c. 19. it is among other things enacted, that if any person or persons shall maliciously cut, break down, burn, demolish, or destroy any bank, mill, engine, flood-gate, or sluice, making or erecting, or made or erected, supported or maintained, for answering the purposes specified in the said act, every person or persons so offending, being thereof convicted, shall be guilty of felony, and shall suffer death as felons without benefit of clergy; and whereas by the 3 Geo. III. c. 16. it is among other things enacted, that whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name and character of any person entitled or supposed to be entitled as an out-pensioner to any out-pension or allowance of money, from the commissioners or governors of Greenwich Hospital, in order to receive the money due or supposed to be due on such out-pension, every such person so offending, and being lawfully convicted of any such offence or offences, shall be deemed guilty of felony, and suffer death as a felon without benefit of clergy; and whereas it is expedient that a lesser degree of punishment should be provided for the several offences created by the above

acts ; it is enacted, that so much of the said acts as excludes the benefit of clergy from persons convicted of the felonies thereby respectively created, shall be and the same are hereby repealed ; and that from and after the passing of this act, any person convicted of the said felonies, or any of them, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. § 1.

And whereas by the 4 Geo. III. c. 37. provision is made for the capital punishment of persons convicted of divers offences, in stealing, cutting, and destroying linen yarn, linen cloth, or manufactures of linen yarn, and the looms, tools, and implements used therein ; and whereas by the 22 Geo. III. c. 40. provision is made for the capital punishment of persons convicted of divers offences, in destroying the woollen, silk, linen, and cotton manufactures, and the tools, tackle, and utensils used therein ; and whereas it is expedient to provide a lesser degree of punishment for such offences, and to amend some defects in the said two acts, and to incorporate therewith the provision made by the 28 Geo. III. c. 55. for the punishment of persons convicted of divers offences, in cutting and destroying framework-knitted pieces, stockings, and other like articles, and breaking, destroying, and damaging frames, machines, engines, tools, instruments, and utensils used in the same manufacture and machinery in the said act mentioned ; it is further enacted, that from and after the passing of this act, the whole of the act of the twenty-second year aforesaid, except so much thereof as repeals former acts, and so much of the said acts of the fourth and twenty-eighth years aforesaid, as create felonies, in stealing, damaging, or destroying manufactures, implements, or machinery, shall be repealed, save only as to offences committed before the passing of this act, as to which the said three last acts shall continue in force ; and that from and after the passing of this act, if any person shall by day or by night break into any house, shop, or building, or enter by force into any house, shop, or building, with intent to cut, break, destroy, or damage in the loom, or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, any woollen, silk, linen or cotton goods, or any goods of any one or more of those materials mixed with each other, or mixed with any other material ; or to cut, break, destroy, or damage any other article of the woollen, silk, linen, or cotton manufactures in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture ; or to cut, break, destroy, or damage any warp or shute of woollen, silk, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace ; or to burn, break, cut, destroy, or damage any loom, frame,



machine, engine, rack, tool, tackle, utensil, instrument, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or shall wilfully and maliciously, and without lawful authority, cut, break, destroy, or damage any such woollen, silk, linen, cotton, or mixed goods or articles, in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any state, process, or progress of manufacture; or burn, break, cut, destroy, or damage any such loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement as aforesaid; or counsel, procure, aid, or abet the commission of the said offences; or of any of them; every person so offending, being thereof lawfully convicted, shall be guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. § 2.

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#### EMPLOYMENT OF MALE CONVICTS. 4 Geo. IV. c. 47.

By this act it is declared, that it shall and may be lawful for his majesty, by any order or orders in council, to declare his royal will and pleasure, that male offenders convicted in Great Britain, and being under sentence or order of transportation, shall be kept to labour in any part of his majesty's dominions out of England, to be named in such order or orders in council; and that whenever his majesty's will and pleasure shall be so declared in council, it shall be lawful for his majesty, by an order in writing to be notified by one of his majesty's principal secretaries of state, to direct the removal and confinement of any such male offender, either at land or on board any ship or vessel to be provided by his majesty, within the limits of any port or harbour in that part of his majesty's dominions which shall be named in such order in council, under the management of the superintendent now being or hereafter to be appointed in England, and of an overseer to be appointed by his majesty for each ship or vessel or other place of confinement to be provided under this act; and that every offender who shall be so removed, shall continue on board the ship or vessel or other place of confinement to be so provided, or any similar ship or vessel or other place of confinement to be from time to time provided by his majesty, until his majesty shall otherwise direct, or until the offender shall be entitled to his liberty. § 1.

And the overseer to be appointed under this act shall possess the same powers and authorities, and shall perform the same duties, and shall be liable to the same controul, as any overseer appointed under the 56 Geo. III. c. 27; provided, that the oath thereby required to be by him taken, for verifying the returns of

prisoners, shall be taken before a judge or justice of peace of the colony in which the overseer shall be resident; and that the superintendent shall make the same reports and returns respecting every such offender, as respecting offenders confined under the said act; and that every such offender as aforesaid, confined under the authority of this act, shall be liable to the same penalties and punishments, for any crime or misconduct by him committed, whether on board such ship or vessel, or other place of confinement to be provided under the authority of this act, or on board any ship or vessel in which he shall be conveyed from England, to the part of his majesty's dominions specified in any order in council to be made under the authority of this act, and for escaping from on board any of such ships or vessels, or other place of confinement, and being at large; and every person rescuing, or attempting to rescue, or assisting in rescuing such offender confined under the authority of this act, shall be liable to the same punishment as if such offender had been confined under the said act of the 56 Geo. III. c. 27. § 2.

And if any suit or action shall be prosecuted against any person for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by the authority of this act; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his action after issue joined, or if upon a demurrer or otherwise judgment shall be given against the plaintiff or plaintiffs, the defendant shall recover treble costs, and have the like remedy for the same as any defendants have by law in other cases; and, notwithstanding a verdict shall be given to any plaintiff in such action or suit as aforesaid, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be, shall certify his approbation of the verdict. § 3.

And all actions, suits, and prosecutions to be commenced against any person or persons, for any thing done in pursuance of this act, shall be laid and tried in the place where the fact was committed, or if committed on the seas, then in the county of Middlesex; and shall be commenced within six calendar months after the fact committed, and not otherwise. § 4.

This act to continue and be in force during the continuance of the said 56 Geo. III. and no longer. § 5.

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#### SENTENCE OF DEATH. 4 Geo. IV. c. 48.

By this act it is enacted, that whenever any person shall be convicted of any felony, except murder, and shall by law be excluded the benefit of clergy in respect thereof, and the court before which such offender shall be convicted shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper subject to be recommended to the royal mercy,



it shall and may be lawful for such court, if it shall think fit so to do, to direct the proper officer then being present in court to require and ask, if such offender hath or knoweth any thing to say, why judgment of death should not be recorded against such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the court shall and may and is hereby authorized to abstain from pronouncing judgment of death upon such offender; and, instead of pronouncing such judgment, to order the same to be entered on record; and thereupon such officer as aforesaid shall and may and is hereby authorized to enter judgment of death, on record against such offender, in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open court against such offender. § 1.

And a record of every such judgment, so entered as aforesaid, shall have the like effect to all intents and purposes, and be followed by all the same consequences, as if such judgment had actually been pronounced in open court, and the offender had been reprieved by the court. § 2.

Nothing herein contained shall extend to that part of the United Kingdom called Scotland. § 3.

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BEER ACT. 4 Geo. IV. c. 51

This act recites, that whereas it is expedient, for supplying the public with beer or ale of an intermediate strength between strong beer and table beer, and subject to a proportionable excise duty, to make such provision as hereinafter mentioned; it is therefore enacted, that from and after the 5th of July, 1823, it shall be lawful for any person or persons, under the licences, rules, conditions, and restrictions hereinafter contained, to brew for sale and sell such beer or ale as is hereinafter mentioned, upon payment of an excise duty after the following rate; (that is to say), for every barrel, containing thirty-six gallons ale measure, which shall be brewed in Great Britain, the sum of 5*s.* and so in proportion for any greater or less quantity thereof than a barrel. § 1.

And all such beer or ale as shall be brewed or sold in Great Britain under the provisions of this act, shall be brewed in the proportion of not less than five barrels, containing thirty-six gallons ale measure each, nor more than five and a half of such barrels, from each quarter of malt; and all such beer or ale which shall be sold in any quantity at one time of nine gallons, or one quarter of such barrel thereof as aforesaid, or upwards, shall be sold at a rate or price not exceeding 27*s.* the barrel, and so in proportion for any quantity greater or less than a barrel; and all such beer or ale which shall be sold in any quantity at one time of less than nine gallons thereof, shall be sold at a rate or price not exceeding 10*d.* the gallon, and so in proportion for any

quantity greater or less than a gallon; and if any person or persons who shall make entry to brew such beer or ale as aforesaid, shall brew or cause or permit or suffer any beer or ale to be brewed of any greater or less strength or quantity than in the proportions aforesaid, shall be charged with duty at and after the rate of 10s. for every such barrel, and so in proportion for any quantity greater or less than a barrel; and if such person or persons as aforesaid shall brew any porter, or shall use, or cause or permit or suffer to be used, in the brewing of any such beer or ale as aforesaid, any other material or ingredients than water, malt, hops, and yeast, or put into or mix with any such beer or ale, or the wort or worts thereof, any water, or any other material or ingredient than hops and the necessary quantity of yeast and fining for such beer, ale, or worts respectively, all such porter, and all such beer, ale, and worts respectively, shall be forfeited; and every such person or persons so offending as aforesaid shall for every such offence forfeit the sum of 200*l.*; and if any person or persons shall sell, or cause or permit or suffer to be sold, any beer or ale brewed under the provisions of this act in any quantity at one time of nine gallons, or one quarter of such barrel thereof as aforesaid, or upwards, at a greater or higher rate or price than 27*s.* the barrel, and so on in proportion for any greater or less quantity than a barrel, or any quantity of such beer or ale at one time less than nine gallons thereof, at a greater or higher rate or price than 10*d.* the gallon, and so in proportion for any greater or less quantity than a gallon, every such person shall for every such offence forfeit the sum of 50*l.* § 2.

And whenever malt or hops shall rise to such a price, as, in the judgment of the commissioners of his majesty's treasury, to require that the brewers and sellers of beer or ale under the provisions of this act should, according to the intent and meaning thereof, be allowed to sell such beer or ale at a higher rate or rates than are by this act specified, it shall be lawful for such commissioners, by any warrant or order signed by any three or more of them, to authorize the brewers, or the retailers thereof, whilst the price of malt or hops shall be so advanced, to sell such beer or ale at and after such greater or higher price or prices as shall be limited and expressed in such warrant or order. § 3.

And all persons who shall be desirous of brewing beer or ale under the provisions of this act, and shall make entry of any house or premises for that purpose, shall, before they begin to brew any such beer or ale, take out an excise licence; and every such person shall pay for every such licence at and after the same rate and proportion which is by law imposed on licences to common brewers of strong beer: and every such licence shall be granted at and for such times, and under, subject, and according to the several laws and regulations relating to licences to be granted to common brewers of strong beer. § 4.

And no brewer, who shall make entry and take out a licence under the provisions of this act, shall be entitled to any allowance



or abatement of the duty, or on the return of duty, for or in respect of waste by fillings and leakage, or any other consideration whatsoever, or shall remove to, take, or receive at his premises entered for brewing beer or ale under the provisions of this act, any other beer, ale, or porter whatsoever; and it shall and may be lawful for any such brewer, to sell and retail such beer or ale at and from such entered premises, where the same has been brewed, at and after such rates and prices respectively as aforesaid, in any quantity, not being to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by such brewer, or in which he shall have any interest or concern; and if any brewer of such beer or ale shall remove to, take, or receive at his premises entered for brewing beer or ale under the provisions of this act, any other beer, ale, or porter whatsoever, or shall sell or retail any such beer or ale at or from any place or places other than as aforesaid, and not being a place duly entered for that purpose, or to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by such brewer, or in which he shall have any interest or concern, all and every such brewer so offending shall, for each offence respectively, forfeit the sum of 100*l.* § 5.

And it shall be lawful for any person or persons to brew any beer, ale, or porter under the provisions of any act or acts of parliament, in force at or immediately before the passing of this act, and also to brew beer or ale under the provisions of this act, upon taking out distinct and separate licences for that purpose: provided that no brewer, who shall make entry to brew under the provisions of this act, shall be a maltster, or maker of malt, or interested or concerned in the making of malt, within the distance of one quarter of a mile in a direct line from the premises entered for brewing beer or ale under the provisions of this act; and provided that no such brewer, who shall also be a brewer of other beer, ale, or porter, shall carry on, or be interested or concerned in carrying on such several breweries together, or within the distance of two hundred yards in a direct line of each other; or shall at the same time have, or take into his custody or possession, any beer or ale brewed under the provisions of this act, and also any other beer, ale, or porter brewed under the provisions of any other act or acts of parliament in force at or immediately before the passing of this act, in the same place, room, storehouse, or cellar, or in any separate places, rooms, storehouses, or cellars, at a less distance from each other, than two hundred yards in a direct line; and every person so offending shall for every such offence forfeit the sum of 200*l.*; and all beer found in the custody or possession of such person so offending shall be forfeited, and shall and may be seized by any officer or officers of excise. § 6.

And it is further enacted, that it shall be lawful for every person to make entry, as hereinafter mentioned, of any place, room,

storehouse, cellar, shop, house, or outhouse, for the sale and retail of beer or ale brewed under the provisions of this act, detached from the entered premises where the same is brewed, and to take out an excise licence under the provisions of this act, authorizing such person to sell by retail, under the conditions and restrictions herein contained, any beer or ale brewed under the provisions of this act; and every licence, which shall be 21s. shall expire at the end of twelve calendar months after the day on which it shall be dated; provided that no such licence shall authorize the person or persons taking out the same to sell any beer or ale brewed under the provisions of this act, to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person or persons taking out such licence, or in which he, she, or they shall have any concern, or to sell, deal in, or retail any other beer, ale, or porter whatsoever, or shall entitle such person or persons to any licence to sell or retail cyder, wine, or spirits. § 7.

And it is further enacted, that no such person or persons shall sell any beer or ale, brewed under the provisions of this act, in any place, room, storehouse, cellar, shop, house, or outhouse, whether entered or not entered for that purpose, detached from the entered premises where the same was brewed, without first taking out an excise retail licence authorizing him, her, or them so to do, or without renewing the same as herein in that behalf directed, or shall sell any such beer or ale to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person or persons taking out such licence, or in which he, she, or they shall have any interest or concern, or shall sell, deal in, or retail any other beer or ale or porter whatsoever; every such person so offending shall for every such offence forfeit the sum of 50*l.* But one licence is sufficient for persons trading in partnership. § 8.

Sections 9, 10, & 11, relate to the collection, management, and appropriation of the duties.

And it is further enacted, that every person and persons, who shall make, or shall be by law required to make entry of any building, place, or utensil for the brewing or sale of beer or ale under the provisions of this act, or for the purpose of carrying on any trade or business subject to the survey of the officers of excise, shall in every such entry distinguish and describe every such building, place, and utensil by a particular letter or number, and shall paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the walls or doors of every such building or place respectively, and upon some convenient and conspicuous part of every such utensil, and keep and continue the same so painted, and from time to time, when occasion may require, or when requested by the supervisor of excise of the district where situated, renew the same so



long as the entry thereof remains uncanceled, so that such letter or number so painted may be easily and readily observed and known by the officers of excise from time to time attending to survey the same; and that wherever any such person or persons shall use or employ in his, her, or their entered buildings or places any fixed pipe or pipes, he, she, or they shall, at the time of making his, her, or their entry of the places and utensils as aforesaid, deliver with such entry, and as part thereof, a drawing or drawings, description or descriptions, distinctly shewing and exhibiting or explaining the course, direction, construction, and use of all and every such pipe and pipes respectively, and of all and every branch and branches thereof, and of all and every cock and cocks thereon, together with the place or places, and utensil or utensils respectively, from and to or with which the same lead or communicate; and that if any building, place, or utensil shall at any time be found to be used by any person or persons for any such purpose as aforesaid without being so entered, described, or distinguished as aforesaid, or without such letter or number being so distinctly painted and continued thereon as aforesaid, or any pipe or pipes be found without being so shewn in such drawing or drawings, or so described as aforesaid, or different from or disagreeing with such drawing or drawings, description or descriptions as aforesaid, every such person or persons using the same shall for every such offence forfeit and lose, over and above all other penalties, the sum of 200*l.*; provided always, that no person or persons whatsoever shall newly erect, set up, enter, or shall make use of any house or place whatsoever in Great Britain, for the brewing of beer or ale under the provisions of this act, within the distance of one hundred yards in a direct line from any house or place which for three months immediately preceding shall have been and shall be at that time licensed, entered, and used for the purpose of brewing any other beer, ale, or porter for sale, under the provisions of any other act or acts of parliament whatsoever; nor shall any person or persons whatsoever, newly erect, set up, enter, or make use of any place or house whatsoever in Great Britain, for brewing or making any other beer, ale, or porter for sale, within the distance of two hundred yards in a direct line from any house or place which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for the purpose of brewing beer or ale under the provisions of this act; nor shall any person or persons newly erect, set up, enter, or make use of any place, room, storehouse, cellar, shop, house, or outhouse within Great Britain, for selling or retailing any beer or ale brewed under the provisions of this act, within the distance of twenty yards in a direct line from any house or premises which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for selling or retailing any other beer, ale, or porter; nor shall any person or persons newly erect, set up, enter, or make use of any house or premises for selling or retailing any other

beer, ale, or porter, within the distance of twenty yards of any place, room, storehouse, cellar, shop, house, or outhouse, which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for the sale and retail of beer or ale brewed under the provisions of this act; on pain of the person or persons so offending forfeiting, in each and every such case, the sum of 50*l.* for every week that such house or place shall be erected, set up, entered, or used respectively as aforesaid, contrary to this act. § 12.

And every person and persons who shall make entry of any buildings or premises for brewing beer or ale under the provisions of this act, shall specify and distinguish in such entry, the room, storehouse, or place, in which he, she, or they shall intend to store or keep the malt for such brewing, and shall from time to time, when and so often as he, she, and they shall receive any malt, store, lodge, and place the same in one or more of such entered rooms, storehouses, or other places, and shall use or employ no other malt, ground or unground, for brewing beer or ale under the provisions of this act, than such as shall be taken by him, her, or them, as hereinafter mentioned, from one or more of such entered rooms, storehouses, or places for that purpose, and of which entry shall on the same day be made in the book hereinafter mentioned; under the penalty of 200*l.* in each case. § 13.

And every brewer shall keep a book, to be delivered to him by the proper officer of excise; which book shall be prepared with proper and distinct columns for entering accounts of all the malt which shall be taken or received by any such brewer, to be used in the brewing of such beer or ale as aforesaid; and every such brewer shall, under the date, and on the same day on which he shall take or receive any malt, ground or unground, into his custody or possession for brewing, write and enter and in the proper columns prepared for such purposes respectively, a true and particular account of the number of bushels of malt, distinguishing the same whether ground or unground, which he shall take or receive into his custody or possession; and shall also write and enter, or cause to be written and entered as aforesaid, the christian and surnames, and place or places of abode of the person or persons of whom such malt was purchased, or from whom such malt was received; and shall also write and enter, or cause to be written and entered as aforesaid, an account of the quantity of such malt in bushels, and distinguishing whether ground or unground, which shall from time to time be used at such brewery, and make every such last-mentioned entry in such book under the date and on the same day in which such malt was so used; and if any such brewer shall neglect or refuse to make or cause to be made any such entry or entries as aforesaid, or shall cancel, obliterate, or alter, or cause or suffer to be cancelled, obliterated, or altered, any such entry or entries, or shall make any untrue entry or entries therein, or shall at any time withhold, conceal, or make away with any such book or any part thereof,



every such brewer so offending shall for each and every such offence forfeit the sum of 100*l.* § 14.

Such books to be opened to inspection of officers; and any person obstructing officers in the execution of their duty to forfeit 200*l.* § 15.

Malt in stock to be laid regularly and even, to enable the officers to gauge the same, under the penalty of 200*l.* § 16.

The book to be filled up before cast up by officer; and the brewer may require malt in stock to be measured, if he disputes the accuracy of the officer's gauge. § 17.

And it is further enacted, that on every brewing by any brewer under the provision of this act, the whole of the worts made on and by such brewing shall be collected and mixed together by such brewer, and made of one and the same quality, before the same or any part thereof shall be cleansed, removed, or run from the fermenting tun or tuns; and no such beer or ale shall be put into or tunned, cleansed, kept, or stored in any cask, vat, or other vessel exceeding the content or size of a butt or pipe of three barrels; and that before any such cask, vat, or other vessel shall be used for any such purpose as aforesaid, the same shall be entered at the proper office of excise, and be truly gauged and inched to the satisfaction of the proper officer, under the penalty in each case of 100*l.* and every cask, vat, or other vessel which shall have been so used as aforesaid, with all the beer contained therein, shall be forfeited, and shall and may be seized by any officer of excise. § 18.

And when any beer or ale shall be sold and sent out or delivered for consumption or otherwise, in any quantity of four gallons or upwards, such beer shall be sent out in a cask on which shall be branded and permanently marked, in large and legible letters, the name of the brewer, and of the place or brewery where such beer was brewed; as well as the numeral figure 5, of the length of four inches at the least, to denote the quality of such beer, under the penalty of 50*l.*; provided, that no brewer shall be subject to any such penalty in any case where such beer shall be taken away by the person to whom the same may be sold, in any cask produced by him, and then filled for such purpose. § 19.

The brewers of this and all other beer are to make a declaration in writing, of the strength and quality of the beer brewed, after every brewing, under the penalty of 200*l.* § 20.

All fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, or mitigated, by such ways, means, or methods, as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated by any law or laws of excise, or by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or in the court of exchequer in Scotland respectively; and that one moiety of every such fine, penalty, or forfeiture shall be to his majesty his heirs and

successors, and the other moiety to him, her, or them who shall discover, inform, or sue for the same. § 21.

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#### INTERMENT OF FELO DE SE. 4 Geo. IV. c. 52.

Whereas it is expedient that the laws and usages relating to the interment of persons against whom a finding of *felo de se* shall be had, should be altered and amended: it is therefore enacted, that from and after the passing of this act it shall not be lawful for any coroner, or other officer having authority to hold inquests, to issue any warrant or other process directing the interment of the remains of persons against whom a finding of *felo de se* shall be had in any public highway; but that such coroner or other officer shall give directions for the private interment of the remains of such person *felo de se*, without any stake being driven through the body of such person, in the church-yard, or other burial-ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of *felo de se* had not been found against such person; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night. § 1.

Provided nevertheless, that nothing herein contained shall authorize the performing of any of the rights of Christian burial on the interment of the remains of any such person as aforesaid; nor shall any thing hereinbefore contained be taken to alter the laws or usages relating to the burial of such persons, except so far as relates to the interment of such remains in such church-yard or burial-ground, at such time and in such manner as aforesaid. § 2.

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#### BENEFIT OF CLERGY EXTENDED TO LARCENIES. 4 Geo. IV. c. 53.

This act recites, that whereas by the 22 Car. II. c. 5. the benefit of clergy is taken away from persons convicted of cutting and taking, stealing, or carrying away any cloth or other woollen manufactures from the rack or tenter in the night-time, or of stealing or embezzling any of his majesty's sails, cordage, or any other his majesty's naval stores, to the value of 20s. provided that it shall be lawful for the judges to grant a reprieve for staying of the execution of such offenders, and to cause them to be transported for the space of seven years, and kept to hard labour: and whereas by the 10 & 11 W. III. c. 23. intituled, "*An act for the better apprehending, prosecuting, and punishing of felons that commit burglary, housebreaking, or robbery, in shops, warehouses, coach-houses, or stables, or that steal horses, as the same is altered by the 1 Geo. IV. c. 117.*" the benefit of clergy is taken away from



persons convicted of privately and feloniously stealing any goods, wares or merchandize of the value of 15*l.* in any shop, warehouse, coach-house, or stable, or of assisting, hiring, or commanding any person to commit such offence: and whereas by the 24 Geo. II. c. 45. intituled, "*An act for the more effectual preventing of robberies and thefts upon any navigable rivers, ports of entry or discharge, wharfs and keys adjacent,*" the benefit of clergy is taken away from persons convicted of feloniously stealing any goods, wares, or merchandize of the value of 40*s.* in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or any port of entry or discharge, or in any creek belonging to any navigable river, port of entry or discharge, within the kingdom of Great Britain, or of feloniously stealing any goods, wares, or merchandize of the value of 40*s.* upon any wharf or key adjacent to any navigable river, port of entry or discharge, or of being present, aiding and assisting in the committing any of the offences aforesaid; and whereas it is expedient that a lesser degree of punishment than that of death should be provided for the offences from which the benefit of clergy is so taken away as aforesaid, and that the same punishment should be extended in manner hereinafter mentioned: it is therefore enacted, that so much of the said recited acts as takes away the benefit of clergy from the persons convicted of the offences hereinbefore mentioned, shall be and the same are hereby repealed; and that from and after the passing of this act, every person who shall be lawfully convicted of cutting, taking, stealing, or carrying away any cloth, or other woollen manufactures from the rack or tenters in the night-time, or of stealing or embezzling his majesty's ammunition, sails, cordage, or naval or military stores, or of privately stealing any goods or chattels in any shop, warehouse, coach-house, or stable, or of stealing any goods, wares, or merchandize in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river or canal, or in any port of entry or discharge, or in any creek belonging to any such river, canal, or port, or from any dock, wharf, or quay adjacent to any such river, canal, or port, or of procuring, counselling, aiding, or abetting any such offender, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years.

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#### BENEFIT OF CLERGY AND OTHER PURPOSES.

FELONIES. 4 Geo. IV. c. 54.

This act recites, that whereas by 9 Geo. I. c. 22. intituled, "*An act for the more effectual punishing wicked and evil-disposed persons going armed in disguise, and doing injuries and violences to the persons and properties of his majesty's subjects, and for the*

*more speedy bringing the offenders to justice ;*" it is amongst other things enacted, that if any person or persons being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or in any warren or place where hares or conies have been, or shall be usually kept, or in any high road, open heath, common, or down ; or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are usually kept ; or shall unlawfully steal or take away any fish out of any river or pond ; or if any person or persons shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the offences before mentioned ; or if any person or persons shall, by gift or promise of money or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy : and whereas it is expedient that a lesser degree of punishment should be provided for the said recited offences, and that the same punishment should be extended to persons accessory thereto ; it is therefore enacted, that so much of the said recited act as excludes the benefit of clergy in the cases aforesaid, shall be repealed ; and that from and after the passing of this act, every person duly convicted of the felonies hereinbefore recited, or of any of them, or of procuring, counselling, aiding, or abetting the commission thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, for any term not exceeding three years. § 1.

And whereas by the said recited acts it is further enacted, that if any person or persons shall unlawfully and maliciously kill, maim, or wound any cattle, or cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit, or shall forcibly rescue any person being lawfully in custody of any officer or other person for such offence, or shall, by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy : and whereas it is expedient that a lesser degree of punishment should be provided for the said last-recited offences, and that the same should be extended in the manner hereinafter mentioned ; be it therefore further enacted, that so much of the said recited act as is last hereinbefore recited shall be and the



same is hereby repealed ; save only as to offences committed before the passing of this act, as to which the said recited act shall continue in force : and that from and after the passing of this act, if any person shall unlawfully and designedly kill, maim, or wound any cattle, whether from malice conceived against the owner or otherwise, or shall unlawfully and maliciously cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation for ornament, shelter, or profit, or shall procure, counsel, aid, or abet the commission of the said offences, or of any of them, or shall forcibly rescue any person lawfully in custody of any officer or other person, for any of the said offences, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for such term not less than seven years as the court shall adjudge, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. § 2.

And whereas by the said recited act it is further enacted, that if any person or persons shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing, or shall forcibly rescue any person being lawfully in custody of any officer or other person for any such offence, or shall, by gift or promise of money or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy ; and whereas by the 27 Geo. II. c. 15. intituled, "*An act to explain and amend the 9 Geo. I.*" it is among other things enacted, that if any person or persons shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to kill or murder any of his majesty's subject or subjects, or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw, though no money or venison or other valuable thing shall be demanded in or by such letter or letters, or shall forcibly rescue any person being lawfully in custody of any officer or other person for the said offence, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy ; and whereas by the 30 Geo. II. c. 24. intituled, "*An act for the more effectual punishment of persons who shall attain or attempt to attain possession of goods or money by false or untrue pretences, for preventing the unlawful pawning of goods, for the easy redemption of goods pawned, and for preventing gaming in public houses by journeymen, labourers, servants, and apprentices,*" it is among other things enacted, that all persons who shall knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names,

letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money, goods, wares, or merchandizes from the person or persons so threatened to be accused, shall be deemed offenders against law and the public peace; and the court before whom such offender or offenders shall be tried, shall, in case he, she, or they shall be convicted of any of the said offences, order such offender or offenders to be fined and imprisoned, or to be put in the pillory or publicly whipped, or to be transported for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and order: and whereas it is expedient that a lesser degree of punishment should be provided for the offence of sending threatening letters, in the cases mentioned in the two first recited acts, and that the same degree of punishment should be inflicted in the cases mentioned in the last recited act, and be extended to persons accessory to the said offences; it is therefore further enacted, that from and after the passing of this act, so much of the said recited acts of the 9 Geo. I. and of the 27 and 30 Geo. II. as relates to the sending and delivering letters in the cases therein respectively mentioned, shall be and the same is hereby repealed, save only as to offences committed before the passing of this act, as to which the said acts shall continue in force; and that from and after the passing of this act, if any person shall knowingly and wilfully send any letter or writing, with or without any name or signature subscribed thereto, or with a fictitious name or signature, demanding money or other valuable thing, or threatening to kill or murder any of his majesty's subjects, or to burn or destroy his or their houses, out-houses, barns, stacks of corn or grain, hay or straw, or shall knowingly and wilfully send or deliver any such letter or writing, threatening to accuse any of his majesty's subjects of any crime punishable by law with death, transportation, or pillory, or of any infamous crime, with a view or intent to extort or gain money, security for money, goods or chattels, wares or merchandize, from the person or persons so threatened, or shall procure, counsel, aid, or abet the commission of the said offences, or of any of them, or shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the said offences, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for such term, not less than seven years, as the court shall adjudge, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. § 3.

Nothing herein contained shall be construed to alter or affect the remedy given by the said first recited act to the party damaged, by killing or maiming cattle, or by cutting or destroying trees, against the inhabitants of the hundred. § 4.



And whereas it is expedient to make better provision for the punishment of persons guilty of offences against the form of the 7 Geo. II. c. 21. intituled, "*An act for the more effectual punishment of assaults with intent to commit robbery,*" and to amend the said act; it is therefore enacted, that from and after the passing of this act, the said last recited act shall be and the same is hereby repealed, save only as to offences committed before the passing of this act, as to which the said act shall continue in force; and that from and after the passing of this act, if any person shall maliciously assault any other person with intent to rob such other person, or shall by menaces or by force maliciously demand money, security for money, goods or chattels, wares or merchandize, of any other person, with intent to steal the same, or shall maliciously threaten to accuse any other person of any crime punishable by law with death, transportation, or pillory, or of any infamous crime, with a view or intent to extort or gain money, security for money, goods or chattels, wares or merchandize, from the persons so threatened; or shall procure, counsel, aid, or abet the commission of the said offences, or of any of them; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for such term, not less than seven years, as the court shall adjudge, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. § 5.

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TO CONSOLIDATE AND AMEND THE LAWS  
RELATING TO PRISONS. 4 Geo. IV. c. 64.

By this act the several statutes and acts, and parts of statutes and acts following, are repealed, so far as relates to such gaols or prisons, or houses of correction, as this act shall extend to; viz.

- 1 Edw. III. st. 1. c. 7. so far as relates to inquiry to be made of gaolers, which by duress compel prisoners to appeal;
- 4 Edw. III. c. 10. so far as relates to sheriffs and gaolers receiving offenders without taking any thing;
- 14 Edw. III. st. 1. c. 10. so far as relates to the punishment of a gaoler compelling a prisoner by duress to become an approver;
- 7 Jac. 1. c. 4. so far as relates to the providing houses of correction, to the appointment, authority, and allowance of the governor, and to his accounting to justices for persons committed to his custody;
- 19 Car. II. c. 4. so far as relates to the providing stocks for setting prisoners to work, and to the removal of prisoners on occasion of sickness;
- 22 & 23 Car. II. c. 20. so far as relates to prisoners being allowed to send for victuals and other necessaries, and to fees and charities, and to the separation of felons and debtors;
- 11 & 12 W. III. c. 19. any thing in an act of the 6 Geo. 1. c. 19.

for making perpetual any act or acts relating to the building and repairing of county gaols, to the contrary in anywise notwithstanding ;

- 2 Geo. II. c. 22. so far as relates to prisoners being allowed by keepers of prisons and gaols to send for victuals and other necessaries, and to the taking of fees, and the making and hanging up tables thereof, and to inquiries concerning the same, and to the hearing of complaints of extortion against gaolers, and examining into gifts and legacies for the benefit of poor prisoners, and hanging up tables thereof ;
- 14 Geo. II. c. 33. so far as relates to repairing, enlarging, and building houses of correction, and to buying houses and lands for that purpose ;
- 16 Geo. II. c. 31. so far as relates to the escape of prisoners from any gaol or prison to which this act shall extend ;
- 17 Geo. II. c. 5. so far as relates to the erecting, enlarging, and managing of houses of correction, and the fining or turning out of masters of them for misbehaviour ;
- 24 Geo. II. c. 40. (made among other things for granting an additional duty upon spirituous liquors, and upon licences for retailing the same, and for repealing the 20 Geo. I. made among other things for more effectually restraining the retailing of distilled spirituous liquors), so far as relates to the retailing of spirituous liquors in gaols, prisons, or houses of correction, to the carrying of liquors into the same, to the search for such liquors, and to the hanging up of a copy of certain clauses of the said act in such gaols, prisons, or houses.
- 32 Geo. II. c. 28. for relief of debtors, with respect to the imprisonment of their persons, so far as relates to prisoners being allowed to send for victuals and other necessaries, and to the settling, signing, reviewing, enrolling, and hanging up of tables of fees, rates, and benefactions, and rules for the government of gaols and prisons.
- 13 Geo. III. c. 58.
- 14 Geo. III. c. 59.
- 22 Geo. III. c. 64.
- 24 Geo. III. st. 2. c. 54, 55.
- 29 Geo. III. c. 67.
- 31 Geo. III. c. 46. except only so much as relates to the imprisonment and employment in hard labour, in the common gaol of the county, of prisoners sentenced to transportation, or to whom the royal mercy shall be extended on condition of transportation ;
- 55 Geo. III. c. 48.
- 58 Geo. III. c. 32. amending so much of the said act of the 55 Geo. III. as relates to the salaries of the clergymen officiating as chaplains in houses of correction :
- And the said several statutes and acts are repealed accordingly, and from and after the commencement of this act shall cease and determine, so far as relates to gaols and houses of correction to



which this act shall extend ; save and except so far as the said acts, or any of them, repeal any former act or acts, or any clause, matter, or thing therein ; and also, save and except as to any proceeding for the punishment of any person for any offence which shall before the commencement of this act have been committed ; and as to any presentment before that time made by any justice of the peace or grand jury ; and as to any appointment before that time made by any officer or other person, to perform any duties under the said recited acts, or any of them : and as to any rules and regulations, acts and deeds, before that time lawfully established, made, or done, under or by virtue of any one or more of the said acts ; and as to the fulfilment of any contracts or agreements before that time lawfully made, under or by virtue of the said recited acts, or any of them. § 1.

In each county, riding, &c. and in each city, mentioned in Schedule (A) annexed, there shall be one gaol and one house of correction ; and the regulations and provisions contained in this act shall extend, in manner hereinafter mentioned, to every such gaol or house of correction, and to the several gaols and houses of correction in the cities of London and Westminster. § 2.

Houses of correction already established may be retained, to be used for particular classes of prisoners. § 3.

And at the Michaelmas general quarter sessions which shall be held in every county, riding, or division of a county in England and Wales, and in the several districts, cities, towns, and places to which this act shall extend, next after the commencement of this act, and at any subsequent general or quarter sessions to be held from time to time, the justices of the peace there assembled shall proceed in carrying this act into effect ; and such justices shall, by orders to be made for that purpose, ascertain and declare to what class or classes of prisoners every such gaol, house or houses of correction, or any part or parts of any of them respectively, shall be applicable ; and every such order shall be signed by the chairman of such sessions, and shall be notified by the clerks of the peace to the several justices of the peace in every such county, riding, or division, district, city, town, or place respectively ; and notice thereof shall be inserted in three of the newspapers usually circulated in such county, riding, or division, or district, city, town, or place respectively, within three weeks after any such order shall be made at any such sessions ; and a copy thereof shall be served upon the keeper of every gaol or house of correction within every such county, riding, division, city, district, town, or place ; and after the making of such order, and service of such copy thereof upon such keeper as aforesaid, such class or classes of prisoners as shall be specified in such order, and no other, shall be committed to or detained in any such gaol, house or houses of correction, or any part of any of them respectively ; and all persons not coming within the class or description of prisoners who may lawfully be committed to or detained in such prison as shall be appointed by the justice for the confinement of one or

more class or classes of prisoners, may be removed to the gaol or house of correction of the county, riding, or division; and every such gaol or house of correction shall be deemed the legal gaol, prison, or place of confinement of every person respectively committed to the same in pursuance of such order as aforesaid. § 4.

Where houses of correction and gaols are parts of the same building, or inclosed in the same boundary wall, and under the same keeper and visiting justices, the classification in the whole of such buildings, and not in each part separately, required by this act, shall be carried into effect; but prisoners for debt are to be confined in that part of the building appropriated for the gaol. § 5.

All persons who in pursuance of any order shall be removed to, committed to, or detained in the part of such united or contiguous buildings which shall be declared and ascertained to be the gaol, shall from thenceforth be deemed to be in the legal custody of the sheriff and of the gaoler appointed by the sheriff, in the same manner as if such person had been committed to the common gaol before the passing of this act: provided, that the sheriff shall not be answerable for the safe custody of any person who in pursuance of any such order shall from time to time be removed to, committed to, or detained in any part of such united or contiguous buildings other than the part so ascertained and declared to be the gaol. § 6.

And it is further enacted, that from and after the 1st of September, 1824, in every county, riding, or division of a county in England and Wales, and in the several districts, cities, towns, or places to which this act shall extend, all idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, shall be committed to some house of correction belonging to such county, riding, or division, district, city, town or place respectively; and that such house of correction shall be deemed the only legal place of commitment of any such person. § 7.

And in all cases where any person liable by law to be committed to the house of correction shall be apprehended within any district, city, town, or place mentioned in the schedule annexed to this act, and the inhabitants of any such district, &c. are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such district, city, town, or place is situate, it shall be lawful for the justices of the peace of such district, &c. to commit such person to the house of correction of the county, riding, or division in which such district, &c. is situate; and every person so committed shall and may be received, detained, dealt with, and ordered to be set and kept to hard labour or other work, or conveyed and sent away or discharged, and be subject and liable to the same correction and punishment to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division; and in such case it shall not be necessary or required that any other house of correction shall be built or main-



tained in or for such district, &c. and the inhabitants of such district, &c. shall not be compelled or compellable to the payment of any rate or sum of money whatever for the building or maintaining of any other house of correction in or for such district, &c. § 8.

The rights of mayors, &c. having separate jurisdictions not to be affected by this act. § 9.

And whereas it is fit and proper to secure an uniformity of practice in the management of the several prisons to which this act shall extend ; it is therefore further enacted, that the following rules and regulations shall be observed and carried into effect, so far as such rules may be applicable or can be applied to the particular description or class of prisoners confined in such prisons.

1. The keeper of every such prison shall reside therein ; he shall not be an under-sheriff or bailiff, nor shall be concerned in any occupation or trade whatsoever. No keeper or officer of a prison shall sell, nor shall any person in trust for him or employed by him sell, or have any benefit or advantage from the sale of any article to any prisoner ; nor shall he, directly or indirectly, have any interest in any contract or agreement for the supply of the prison.
2. A matron shall be appointed in every prison in which female prisoners shall be confined, who shall reside in the prison ; and it shall be the duty of the matron constantly to superintend the female prisoners.
3. The keeper shall, as far as may be practicable, visit every ward, and see every prisoner, and inspect every cell, once at least in every twenty-four hours ; and when the keeper, or any other officer, shall visit the female prisoners, he shall be accompanied by the matron, or in case of her unavoidable absence, by some female officer of the prison.
4. The keeper shall keep a journal, in which he shall record all punishments inflicted by his authority, or by that of the visiting justices, and the day when such punishments shall have taken place, and all other occurrences of importance within the prison, in such manner as shall be directed by the regulations to be made under this act ; which journal shall be laid before the justices at every general or quarter sessions, to be signed by the chairman, in proof of the same having been there produced.
5. Due provision shall be made in every prison for the enforcement of hard labour in the cases of such prisoners as may be sentenced thereto, and for the employment of other prisoners. The means of hard labour shall be provided, and the materials requisite for the employment of prisoners shall be purchased, under such regulations as may be made for that purpose by the justices in general or quarter sessions assembled. If the work to be performed by the prisoners be of such a nature as to require previous instruction, proper persons shall be appointed to afford the same.

6. The male and female prisoners shall be confined in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other; and the prisoners of each sex shall be divided into distinct classes, care being taken that prisoners of the following classes do not intermix with each other;

*In Gaols—*

1. Debtors and persons confined for contempt of court on civil process;
2. Prisoners convicted of felony;
3. Prisoners convicted of misdemeanors;
4. Prisoners committed on charge or suspicion of felony;
5. Prisoners committed on charge or suspicion of misdemeanors, or for want of sureties;

*In Houses of Correction.*

1. Prisoners convicted of felony;
2. Prisoners convicted of misdemeanors;
3. Prisoners committed on charge or suspicion of felony;
4. Prisoners committed on charge or suspicion of misdemeanors;
5. Vagrants.

Such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecution shall also be kept separate in all gaols and houses of correction. Provided always, that nothing herein contained shall be construed to extend to prevent the justices from authorizing, at their discretion, the employment of any prisoner in the performance of any menial office within the prison, or for the purpose of instructing others; and provided also, that if the keeper shall at any time deem it improper or inexpedient for a prisoner to associate with the other prisoners of the class to which he or she may belong, it shall be lawful for him to confine such prisoner with any other class or description of prisoners, or in any other part of the prison, until he can receive the directions of a visiting justice thereon, to whom he shall apply with as little delay as possible, and who in every such instance shall ascertain whether the reasons assigned by the keeper warrant such deviation from the established rules, and shall give such orders in writing as he shall think fit, under the circumstances of the particular case.

7. Female prisoners shall in all cases be attended by female officers.
8. Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, as shall be directed by the rules and regulations to be made under this act, except on Sundays, Christmas Day, and Good Friday, and on any days appointed by public authority for fasting or thanksgiving.
9. Prayers, to be selected from the liturgy of the church of England by the chaplain, shall be read at least every morning by



the chaplain, the keeper, or by some other person, as by the rules and regulations shall be directed, and portions of the scriptures shall be read to the prisoners, when assembled for instruction, by the chaplain, or by such person as he may appoint or authorize.

10. Provision shall be made in all prisons for the instruction of prisoners of both sexes in reading and writing, and that instruction shall be afforded under such rules and regulations, and to such extent, and to such prisoners, as to the visiting justices may seem expedient.
11. Prisoners under charge or conviction of any crime shall attend divine service on Sundays, and on other days when such service is performed, unless prevented by illness or by other reasonable cause, to be allowed by the keeper, or unless their attendance shall be dispensed with by one of the visiting justices.
12. No prisoner shall be put in irons by the keeper of any prison, except in cases of urgent and absolute necessity; and the particulars of every such case shall be forthwith entered in the keeper's journal, and notice forthwith given thereof to one of the visiting justices; and the keeper shall not continue the use of irons on any prisoner longer than four days, without an order in writing from a visiting justice, specifying the cause thereof; which order shall be preserved by the keeper, as his warrant for the same.
13. Every prisoner maintained at the expence of any county, riding, division, city, town, or place, shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the justices in general or quarter sessions assembled, regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto. And it shall be lawful for the justices to order for such prisoners of every description, as are not able to work, or being able cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise provided for, such allowance of food, as the said justices shall from time to time think necessary for the support of health. Prisoners under the care of the surgeon shall be allowed such diet as he may direct. Care shall be taken that all provisions supplied to the prisoners be of proper quality and weight. Scales and legal weights and measures shall be provided, open to the use of any prisoners, under such restrictions as shall be made by the regulations of each prison.
14. Prisoners who shall not receive any allowance from the county, whether confined for debt or before trial for any supposed crime or offence, shall be allowed to procure for themselves, and to receive at proper hours, any food, bedding, clothing, or other necessaries, subject to a strict examination, and under such limitations and restrictions, to be prescribed by the regulations to be made in manner directed by this act, as may be

reasonable and expedient, to prevent extravagance and luxury within the walls of a prison ; all articles of clothing and bedding shall be examined, in order that it may be ascertained that such articles are not likely to communicate infection, or facilitate escape.

15. No prisoner who is confined under the sentence of any court, nor any prisoners confined in pursuance of any conviction before a justice, shall receive any food, clothing, or necessaries, other than the gaol allowance, except under such regulations and restrictions as to the justices in general or quarter sessions assembled may appear expedient, with reference to the several classes of prisoners, or under special circumstances, to be judged of by one or more of the visiting justices.
16. Due provision shall be made for the admission, at proper times and under proper restrictions, of persons with whom prisoners committed for trial may desire to communicate ; and such rules and regulations shall be made, by the justices in general quarter sessions assembled, for the admission of the friends of convicted prisoners, as to such justices may seem expedient ; and the justices shall also impose such restrictions upon the communication and correspondence of all such prisoners with their friends, either within or without the walls of the prison, as they shall judge necessary for the maintenance of good order and discipline in such prison.
17. The surgeon shall examine every prisoner who shall be brought into the prison, before he or she shall be passed into the proper ward ; and no prisoner shall be discharged from prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the surgeon, such discharge is safe, unless such prisoner shall require to be discharged. The wearing apparel of every prisoner shall be fumigated and purified, if requisite, after which the same shall be returned to him or her ; or in case of the insufficiency of such clothing, then other sufficient clothing shall be furnished, according to the rules and regulations of the prison ; but no prisoner before trial shall be compelled to wear a prison dress, unless his or her own clothes be deemed insufficient or improper, or necessary to be preserved for the purposes of justice ; and no prisoner who has not been convicted of felony shall be liable to be clothed in a party-coloured dress ; but if it be deemed expedient to have a prison dress for prisoners not convicted of felony, the same shall be plain.
18. Every prisoner shall be provided with suitable bedding ; and every male prisoner, with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners.
19. The walls and ceilings of the wards, cells, rooms and passages, used by the prisoners throughout every prison, shall be scraped and lime-washed at least once in the year ; the day rooms, work rooms, passages, and sleeping cells shall be washed



or cleansed once a week, or oftener if requisite. Convenient places for the prisoners to wash themselves shall be provided, with an adequate allowance of soap, towels, and combs.

20. All prisoners shall be allowed as much air and exercise as may be deemed proper for the preservation of their health.
21. No tap shall be kept in any prison; nor shall spirituous liquors of any kind be admitted for the use of any of the prisoners therein, under any pretence whatever, unless by a written order of the surgeon, specifying the quantity and for whose use. No wine, beer, cider, or other fermented liquors shall be admitted for the use of any prisoners, except in such quantities, in such manner, and at such times, as shall be allowed by the rules hereafter to be made in pursuance of this act.
22. No gaming shall be permitted in any prison: and the keeper shall seize and destroy all dice, cards, or other instruments of gaming.
23. No money under the name of garnish shall be taken from any prisoner on his or her entrance into the prison, under any pretence whatever.
24. Upon the death of a prisoner, notice thereof shall be given by the keeper forthwith to one of the visiting justices, as well as to the coroner of the district, and to the nearest relative of the deceased, where practicable. § 10.

No prisoner to sit on an inquest in the prison in which he is confined. § 11.

The court of mayor and aldermen of the city of London, so far as respects city prisons, and five justices in sessions, so far as regards prisons within their jurisdiction, may make further regulations for prisons; provided that no such further or additional rules shall be enforced, until the same shall have been submitted, in London and Middlesex, to the two chief justices, and elsewhere to the justices of gaol delivery or of great sessions respectively, at some gaol delivery or great sessions to be held after the making such rules, and until such chief justice or justices of gaol delivery or of great sessions respectively shall have subscribed a certificate or declaration that they do not see any thing contrary to law therein: provided always, that all such rules and regulations shall be consistent with and conformable to the rules and regulations in this act contained; and the justices in general or quarter sessions assembled shall and they are hereby required from time to time to cause copies of so much of the rules of each prison as relates to the treatment and conduct of prisoners confined therein, to be printed in legible characters, and to be fixed up in conspicuous parts of every prison, so that every prisoner may be enabled to have access thereto: and all rules and regulations made and approved pursuant to the directions of this act shall be binding upon the sheriff and upon all other persons; provided, that no such rules shall be so construed as to interfere with the right or duty of the sheriff to appoint or remove any keeper of a county gaol or other prison subject to the authority of such sheriff. § 12.

All the powers and authorities given by this act to justices of the peace in general or quarter sessions assembled, in the several counties, and all other acts to be done and performed by justices of the peace at any sessions in pursuance of this act, shall be exercised and performed, so far as regards the prisons in the city of London and liberties thereof, by the court of mayor and aldermen of the said city, as heretofore has been accustomed, and not by the said mayor and aldermen as magistrates at the general or quarter sessions of the peace to be holden in and for the said city. § 13.

The gaoler and keeper of every gaol and house of correction shall make a report in writing, of the actual state and condition of every such gaol and house of correction, and of the number and description of prisoners confined therein, to the justices, at the several general or quarter sessions to be holden next after the commencement of this act, and at every ensuing general or quarter sessions; and shall at every such general or quarter sessions attend and give answer, upon oath, to all such inquiries as shall be made by the justices at such sessions, with respect to the state and condition of every such gaol or house of correction, and of the prisoners confined therein, and with respect to any other matters and things relating to the said gaol and house of correction, respecting which such justices shall deem it necessary to make any inquiry for the purpose of proceeding and continuing to carry this act into execution, and of ascertaining how far every such gaol and house of correction is capable of affording the means of the classification required by this act. § 14.

Copies of all proceedings and regulations of justices at quarter sessions are to be transmitted to a secretary of state within fourteen days; and plans of prisons drawn upon a scale of one-sixteenth of an inch to a foot, within three months. § 15.

The justices in every county, &c, to which this act shall extend, at the general or quarter sessions next after the commencement of this act, and at every ensuing general or quarter sessions, shall nominate two or more justices who shall consent thereto, to be visitors of each gaol and house of correction within their jurisdiction, and to report the names and places of abode of such visiting justices to one of his majesty's principal secretaries of state; and one or more of the visiting justices so appointed shall personally visit and inspect each prison at least three times in each quarter of a year, and oftener if occasion shall require, and shall examine into the state of the buildings, so as to form a judgment as to the repairs, additions, or alterations which may appear necessary, strict regard being had to the classification, inspection, instruction, employment, or hard labour, required by this act, and shall further examine into the behaviour and conduct of the respective officers, and the treatment, behaviour, and condition of the prisoners, the means of setting them to work, the amount of their earnings, and the expences attending the prison, and of all abuses within the same, and in matters of pressing necessity, and within the powers of their commission as justices, shall take cognizance thereof, and



proceed to regulate and redress the same ; and if the said visitors shall at any time observe, or be satisfactorily informed of any extraordinary diligence or merit in any prisoners under their inspection, they shall report the same to the justices of peace at their next or any subsequent general or quarter session, in order that such justices may, if they shall think proper, recommend any such offender to the royal mercy, in such degree or upon such terms as to them shall seem meet ; and if his majesty shall thereupon be graciously pleased to shorten the duration of such prisoner's confinement, such prisoner shall, upon his or her discharge, together with necessary clothing, receive such sum of money for his or her subsistence, as the visiting justices for the time being shall think proper : so as such sum shall not exceed 20s. nor be less than 5s. in case such offender shall have been confined for the space of one year, and so in proportion for any shorter term of confinement ; and such sums of money, as also the expence of such clothing, shall be paid out of the county rate, or other rate applicable to the expences of prisons. § 16.

Any justice of the peace may visit prisons, and report abuses to the quarter sessions. § 17.

But nothing herein contained shall extend or be construed to extend to authorize or empower any visiting or other justice of the peace to converse or hold any intercourse or communication, except as hereinafter mentioned, with any person who may be committed by lawful authority to any such gaol or other prison, there to be kept in safe and close confinement ; but that, nevertheless, it shall and may be lawful for any visiting justice, so appointed as aforesaid, to visit and inspect at all times when he shall think proper the apartment or place in which such person shall be kept or confined in any prison, and also to see such person, and to hear or receive any representation from him or her as to his or her treatment in such prison, and to inquire and examine into the same. § 18.

Returns are to be made at the several assizes by the keepers of prisons of the persons sentenced to hard labour, specifying in such return the manner in which such sentences have been carried into execution, the particular species of labour in which such prisoners have been employed, and the average number of hours in a day for which such persons so sentenced have been kept to work ; which return shall be signed by such keeper, and also by one at least of the visiting justices, who shall add thereto such observations as the case and circumstances may appear to require. § 19.

List of prisoners tried for felony is to be transmitted to the secretary of state by the keeper of every prison, by post, on the second day after the assizes, containing the names, the crimes, and the sentences of every prisoner, and distinguishing, with respect to all prisoners capitally convicted, such of them as may have been reprieved by the court, and stating the day on which execution is to be done upon those who have not been reprieved ;

and that whenever the court shall adjourn for any longer time than one week, the day upon which the adjournment shall be made shall be deemed the termination of the session within the meaning of this act; and every keeper, who shall neglect or refuse, or shall wilfully transmit a calendar containing any false or imperfect statement, shall for every such offence forfeit the sum of 20*l.* § 20.

The keeper of every prison shall deliver to the court of quarter sessions a certificate, shewing how far the rules have been observed, under the penalty of 10*l.* § 21.

One week before the Michaelmas session in every year, the keeper of every prison to which this act shall extend shall make up a return of the state of his prison for the year then ending, and shall deliver the same, or cause the same to be delivered, to the clerk of the peace, or his deputy, for the use of the justices assembled. § 22.

At every general or quarter sessions, the visiting justices shall make a report in writing of the state and condition of each prison within their jurisdiction, of what repairs, additions, or alterations shall have been made or may be required, and of any abuse or abuses which they may have observed or of which they may have received information, in the management of the prison, as well as of the general state of the prisoners, as to morals, discipline, employment, and hard labour, and observance of rules. § 23.

A general report founded on the report of the visiting justices, the chaplain, or on the certificates of the several keepers of prisons, is to be forwarded annually to the secretary of state, to be laid before parliament. § 24.

Justices may appoint keepers and other officers, except the keeper of the common gaol: provided, that no woman shall be keeper of any prison in which male prisoners are confined; and may fix the salaries of such keepers; and may also allow a pension to the gaoler or keeper on his becoming superannuated. § 25, 26.

When any keeper or other officer shall be removed, or shall resign, &c. two justices may direct the sheriff to eject them and their families from the apartments in the prison, in cases where they shall neglect or refuse to give up possession. § 27.

Justices at the quarter sessions may appoint a clergyman as chaplain to each prison in their jurisdiction, and may fix his salary in the following proportions: (*viz.*) Where the chaplain is appointed to one prison only, and where the prison, including debtors, does not exceed fifty prisoners, the salary is not to exceed 150*l.*; where the number of prisoners does not exceed one hundred, the salary not to exceed 200*l.*; where the number exceeds one hundred, the salary not to exceed 250*l.*; and where the chaplain shall be appointed to one prison only, calculated to contain more than two hundred, or where the chaplain shall be appointed to two prisons, whatever the number of prisoners such two prisons may be calculated to contain, it shall be lawful for



the justices to appoint the salary at their discretion, with reference to the duties to be performed : provided, that when any two or more prisons shall be under the custody of one and the same keeper, they shall be considered as one prison, with reference to the duties and salary of the chaplain ; provided also, that in case of sickness or necessary engagement, the chaplain shall appoint a clergyman to be his substitute for the occasion, such substitute being approved of by the visiting justices ; and the name and residence of such substitute shall be specified in the chaplain's journal. § 28.

No clergyman to officiate till licensed by the bishop. § 29.

Every chaplain shall, on every Sunday, and on Christmas Day and Good Friday, perform the appointed morning and evening services of the Church of England, and preach, at such time or times between the hours of nine and five of the day as shall be required by the rules and regulations of the prison ; and shall catechise or instruct such prisoners as may be willing to receive instruction ; and shall likewise visit the prison on such other days, and perform such other duties, as shall be required by the rules and regulations ; and shall administer the holy sacrament to such prisoners as shall be desirous, and as such chaplain may deem to be in a proper frame of mind to receive the same ; and such chaplain shall also frequently visit every room and cell in the prison occupied by prisoners, and shall direct such books to be distributed and read, and such lessons to be taught in such prison, as he may deem proper for the religious and moral instruction of the prisoners therein ; and he shall visit those who are in solitary confinement ; and it shall be his particular duty to afford his spiritual assistance to all persons under warrant or order for execution : and he shall have free access to all persons convicted of murder, except to such persons as shall be of a religious persuasion different from that of the established church, who shall have made a request that a minister of such persuasion shall be allowed to visit them ; and every such chaplain shall communicate from time to time to the visiting justices any abuse or impropriety which may have come to his knowledge ; and he shall further keep a journal, in which he shall enter the times of his attendance on the performance of his duty, with any observations which may occur to him in the execution thereof ; and such journal shall be kept in the prison, but shall regularly be laid before the justices at every quarter sessions, and shall be signed by the chairman of the sessions in proof of the same having been there produced. § 30.

If any prisoner shall be of a religious persuasion differing from that of the established church, a minister of that persuasion shall, at the special request of such prisoner, be allowed to visit him at proper and reasonable times, under such restrictions by the visiting justices as shall guard against the introduction of improper persons, and as shall prevent improper communications. § 31.

The justices in quarter sessions may grant an annuity to any

chaplain incapable, from infirmity, of executing his office, not exceeding two thirds of his salary. § 32.

The justices in general or quarter sessions shall appoint a surgeon, being a member of one of the royal colleges of surgeons, to each of the prisons within their jurisdiction; and every such surgeon shall visit every prison to which he shall be so appointed twice at least in every week, and oftener if necessary, and to see every prisoner confined therein, whether criminal or debtor, and to report to every general or quarter sessions the condition of the prison, and the state of health of the prisoners under his care; and he shall further keep a journal, in which he shall enter the date of every attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and shall sign the same with his name; and it shall and may be lawful for the justices, at every general or quarter sessions after such appointment, to direct a reasonable sum to be paid as salary to such surgeon, and also such sums of money as shall be due for medicines and other articles for the sick. § 33.

A book is to be kept in which the visits of the chaplain, &c. shall be entered: and every entry shall be signed with the name and in the proper handwriting of such chaplain, &c. and shall contain such remarks as may be thought necessary on the occasion of any such visit; and the chaplain shall, on every Michaelmas quarter sessions, deliver to the justices a statement of the condition of the prisoners and his observations thereupon. § 34.

The justices in general or quarter sessions may apply bequests or benefactions, for the benefit of poor prisoners, either by providing them with the implements of labour, or with the means of returning to their own homes, or in such manner as to the magistrates may appear expedient; and lists or tables of such gifts, legacies, and bequests, for the benefit of the prisoners in every gaol or prison respectively, fairly written, shall be registered by the clerks of the peace of the respective counties and places in the rolls of their respective sessions, without fee or reward, and copies thereof shall be hung up in such gaols and prisons respectively, in some open room or place, to which the prisoners may have resort as occasion shall require. § 35, 36.

And it is further enacted, that it shall and may be lawful for any one or more visiting justice or justices of any prison to which this act shall extend to authorize, by an order in writing, the employment of any prisoners, with their own consent, in any work or labour; and to pay to such prisoners any such wages or portion of the same, and at such periods, as shall be directed: provided always, that it shall not be lawful to place together, on account of such employment, any prisoners who would otherwise be kept separate under the provisions of this act. § 37.

And whereas persons convicted of offences are frequently sentenced to imprisonment without being sentenced to hard labour; it is therefore enacted, that it shall be lawful for two or more visiting justices of any prison, to order that all such persons con-



fined in such prison, in pursuance of any sentence or conviction, except such prisoners as shall maintain themselves, shall be set to some work or labour not severe: and it is hereby declared, that no such prisoner, who shall be of ability to earn, and who shall have the means of earning or of otherwise providing for his own subsistence, shall have any claim to be supported at the expence of the county, riding, or division, or by the sheriff, or the keeper of the prison; provided that when such ability shall cease by reason of sickness, infirmity, the want of sufficient work, or from any other cause, every such person shall, during the continuance of his inability, receive such provision and support as shall be directed for other convicted prisoners in the same prison. § 38.

Any one or more of the visiting justice or justices from whence any prisoner shall be discharged may direct that such moderate sum of money shall be given and paid to every prisoner discharged, who shall not have the means of returning to his or her family or place of settlement, or resorting to any place of employment or honest occupation, as in the judgment of such justice or justices shall be requisite and necessary for such purpose; and all such sums shall be provided for, either out of the bequests or benefactions, or in such manner as is by this act directed with respect to the expence of the support and maintenance of the prisoners in such prisons respectively. § 39.

If any person shall carry or bring, or attempt or endeavour to carry or bring into any prison any spirituous or fermented liquor, it shall be lawful for the gaoler, keeper, turnkey, or any of the assistants, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace, and if he shall lawfully convict such person, he shall forthwith commit such offender to the common gaol or house of correction, there to be kept in custody for any time not exceeding three months, without bail or mainprize, unless such offender shall immediately pay down such sum of money, not exceeding 20*l.* and not less than 10*l.* one moiety to the informer, and the other moiety in aid of the rate applicable to the maintenance of such prison; and if any justice shall receive information upon oath, that any spirituous or fermented liquor is unlawfully kept or disposed of in any prison, he may enter and search, or issue his warrant to enter and search for such liquor; and in case it shall be found, it shall be lawful for the person so finding to seize the same, and cause it to be disposed of as the justice shall direct; and if any gaoler or keeper of any prison shall sell, use, lend, or give away, or knowingly permit or suffer to be sold, used, lent, or given away, in such prison, or brought into the same, any spirituous or fermented liquor, he shall for every such offence, over and above any other punishment by this act enacted, forfeit the sum of 20*l.* § 40.

The keeper of every prison shall have power to hear all complaints touching any of the following offences; (that is to say,) disobedience of any of the rules of the prison; assaults by one

person confined in such prison upon another, when no dangerous wound or bruise is given; profane cursing and swearing; any indecent behaviour, and any irreverent behaviour at chapel; all of which are declared to be offences by this act, if committed by any description of prisoners; absence from chapel without leave; idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this act, if committed by any prisoner under charge or conviction of any crime; and the said keeper may examine any persons touching such offences, and may determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders upon bread and water only, for any term not exceeding three days. § 41.

And in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than the gaoler or keeper is by this act empowered to punish, the said gaoler or keeper shall forthwith report the same to the visiting justices, or one of them for the time being; and any one such justice, or any other justice acting in and for the county, riding, or division of a county, or for the district, city, town, or place to which such prison belongs, shall have power to inquire upon oath, and to determine concerning any such matter so reported to him or them, and to order the offender to be punished by close confinement for any term not exceeding one month, or by personal correction in the case of prisoners convicted of felony, or sentenced to hard labour. § 42.

And if any person shall convey or cause to be conveyed into any prison any mask, vizard, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizard or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years. § 43.

Any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping, or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall,



together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced. § 44.

On report or presentment of insufficiency of prisons, the justices in quarter sessions may contract for enlarging, building, or repairing the same. § 45.

Sections 46 to 67 relate exclusively to the repairing and rebuilding, &c. of prisons, and prescribes rules and directions to be observed for such purposes.

In order to defray the expences of the several matters and things directed to be done respecting gaols, houses of correction, and other prisons, and for the support and maintenance of prisoners confined therein, who are entitled by law to such support, and for all other expences necessary to the execution of this act, and not hereinbefore particularly provided for; it is further enacted, that it shall be lawful for the justices, at their general or quarter sessions assembled, to cause such sums of money as shall be necessary for all or any of those purposes to be raised on the counties, ridings, divisions, districts, cities, towns, or places to which this act shall extend, in the same manner as rates applicable to the building, repairing, or maintenance of such prisons respectively, are now directed to be raised by law. § 68.

Sections 69 and 70, direct how fines and penalties shall be recovered and applied, and the form of conviction to be observed.

And it is further enacted, that if any person shall think himself aggrieved by any conviction of any justice, such person may appeal to the justices of the peace at any quarter sessions of the county, riding, division, district, city, town, or place wherein such conviction shall have taken place, within four calendar months after the cause of such complaint shall have arisen, such appellant first giving or causing to be given ten clear days notice at least in writing of his or her intention to bring such appeal, and of the matter thereof, to the justice or justices before whom the conviction shall have been had, and to the clerk of the peace for the county, riding, or division, district, city, town, or place, in which such conviction shall have been had, and within two days after such notice entering into recognizance before some justice for such county, riding, or division, district, city, town, or place, with two sufficient sureties, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by the justices at such session; and the justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such session shall be final, binding, and conclusive, to all intents and purposes. § 71.

No conviction is to be quashed for want of form. § 72.

Persons sued for any thing done in pursuance of this act may plead the general issue. § 73.

And all matters and things which by this act the sheriff of any county is required or authorized to do and perform, shall, in those districts, cities, towns, liberties, or places where the sheriff hath no jurisdiction, be done and performed by the bailiff or bailiffs, or other like officer or officers, having or exercising within their respective districts, cities, towns, and liberties, duties analogous to the duties of the sheriff of a county; and all matters and things which by this act the treasurer of any county is required or authorized to do and perform, shall, in those places where the county treasurer hath no authority, be done and performed by the officer or officers having and exercising within such places duties analogous to those of a county treasurer; and all matters and things which by this act the clerk of the peace of the county, riding, or division is required or authorized to do and perform, shall, in those places where the clerk of the peace of any county hath no authority, be done and performed by the town clerk or other like officer having and exercising within such places duties analogous to those of the clerk of the peace of any county. § 74.

All actions, suits, and prosecutions to be commenced against any person for any thing done in pursuance of this act, shall be laid and tried in the county where the facts were committed, and shall be commenced within six calendar months after the fact committed, and not otherwise. § 75.

And it is further enacted, that nothing in this act contained shall extend to the Royal Hospital of Bethlehem, and Prison of Bridewell, nor to the King's Bench or Fleet Prison, or to the Prison of the Marshalsea or Palace Courts, the General Penitentiary at Milbank, nor to the penitentiary at Gloucester; nor to any ships or vessels provided in any port or navigable river for the reception and employment of convicts sentenced to transportation; nor to exempt any such convicts from any punishment or discipline to which they were liable by law before the passing of this act. § 76.

#### SCHEDULE (A.)

A List of Districts, Cities, Towns, and Places, in England and Wales, to which this act shall extend, in addition to Counties at large.

Bristol.	Kingston-upon-Hull.	Norwich.
Canterbury.	Leicester.	Nottingham.
Chester.	Litchfield.	Portsmouth.
Coventry.	Lincoln.	Worcester.
Exeter.	Liverpool.	York.
Gloucester.	Newcastle-upon-Tyne.	

#### CUSTOMS RELATIVE TO GREAT BRITAIN.

4 Geo. IV. c. 69.

By the first and second sections of this act, from 10th October, 1823, certain duties of customs imposed by the 59 Geo. III. c. 52.



under Schedules (A) and (B), of export duties on coals under Schedule (C), and the duties on slate and stone coastwise under Schedule (D), are repealed; and new duties of import on certain articles specified in Schedules (A) and (B), and on export of coals according to Schedule (C), and on slate coastwise according to Schedule (D), are imposed; and no drawback of duties are allowed on Schedules (A) and (B).

And for ascertaining the degrees of specific gravity or strength, according to which the duty on the juice of lemons, limes, and oranges, shall be collected and paid, it is enacted, that such degrees of such specific gravity or strength shall be ascertained by a glass citrometer, which shall be graduated in degrees in such manner that distilled water being assumed as unity, at the temperature of sixty degrees by Fahrenheit's thermometer, every degree of the scale of such citrometer shall be denoted by a variation of four one-thousandth parts of the specific gravity of such water. § 3.

Upon the exportation from Great Britain (except to Ireland) of any foreign rice or paddy which shall have been cleaned in Great Britain, and which shall have paid the duties payable on the importation thereof under this act, and the tables thereto annexed, there shall be allowed and paid for every hundred weight thereof, a drawback equal in amount to the duty paid on every four bushels of the rough rice or paddy from which the same shall have been cleaned. § 4.

The drawback upon such rice so exported, shall be paid and allowed upon such foreign rough rice or paddy only as shall have been or shall be warehoused upon its first importation into any part of Great Britain, and as shall be taken out of warehouse upon payment of the duty due upon the importation of the same, for the sole and express purpose of being cleaned, and as shall be returned so cleaned into the warehouse from which it shall have been taken within one calendar month from the time when the duty shall be paid thereon, and as shall remain in such warehouse until the same shall be duly exported, and as shall be so exported from such warehouse: provided, that the owner or proprietor of such rice, at the time of re-warehousing such rice when cleaned, shall make oath before the chief officer of the customs at the port where the same shall be warehoused, that the said rice is the same which was so taken from the said warehouse for the purpose of undergoing the process of cleaning, and the duty paid thereon as aforesaid § 5.

The drawbacks granted, allowed, and made payable on the exportation of any of the articles specified in the Schedules (A) and (B) to this act annexed, under and by virtue of any act or acts in force immediately before the 10th of October, 1823, shall remain and continue payable with respect to such goods, wares, and merchandize as shall have paid the duties imposed on the importation thereof, under any act or acts in force before the said 10th of October, 1823, and which shall be exported after the said 10th of October, 1823.

Nothing in this act contained shall extend or be construed to extend to compel the proprietor of goods, wares, or merchandize specified in Tables (A) and (B), to pay the duties thereon upon the importation or landing of such goods, wares, or merchandize in Great Britain, in any case where such goods, wares, or merchandize may or might by law be warehoused or otherwise secured without payment of duty, or in any case where the whole or any part of the duties on such goods, wares, or merchandize are or may be permitted to be secured by bond or otherwise; but that in all such cases, the duties may be secured by bond or otherwise, in such manner and under such rules, regulations, restrictions, and conditions as are or may be contained in any act or acts for that purpose, except where it is otherwise provided by this act: provided, that in case the importer or proprietor of any goods, wares, or merchandize specified in Tables (A) and (B), which shall have been lodged in warehouse or otherwise secured at any time on or immediately before the said 10th of October, 1823, and on which the duties due on the importation thereof shall not have been paid, shall be desirous of taking any such goods, wares, or merchandize out of such warehouse, or from any place wherein the same shall be secured, for the purpose of being used or consumed in Great Britain, then and in such case the duties imposed by this act shall be payable thereon, notwithstanding such goods, wares, or merchandize may have been imported and warehoused before the said 10th of October, 1823, except where it is otherwise provided by this act. § 7.

All goods of the manufacture of the East Indies, Persia, or China, liable to the payment of any duties under this act, or any act or acts in force at the time of the passing of this act, and which may have been or may be lodged or secured without payment of duty in any warehouse at any port of the United Kingdom of Great Britain and Ireland, under the provisions of any act or acts in force for that purpose, shall and may be delivered out of any such warehouse for the purpose of being exported, and shall and may be exported from and out of such warehouse to any British colony, plantation, territory, or dominion, in vessels of the burthen of not less than one hundred tons, without payment of any duties of customs or excise whatever. § 8.

From and after the passing of this act, it shall and may be lawful for the proper officer or officers of his majesty's customs to grant permission for the removal of any coral beads coastwise by sea or inland navigation, or by land carriage, from any warehouse or warehouses in the port of London in which such coral beads shall have been lodged or secured, to any other port in Great Britain to which any East India goods may by law be legally removed for the purpose of exportation therefrom, due entry being first made with the officer or officers of the beads so to be removed. § 9.

And in case any coral beads which shall be so removed under the authority of this act shall not be well and truly delivered,



without alteration or diminution, into the custody and possession of the collector and comptroller at the port to which the same are entered to be removed, within three calendar months next after the time when such coral beads shall be so removed from the warehouse or warehouses in London, all such coral beads so removed shall be forfeited, and shall and may be seized by any officer or officers of his majesty's customs: and the owner, proprietor, or other person at whose instance such coral beads shall have been removed, and every person into whose hands such coral beads or any parts thereof shall knowingly come, or who shall knowingly harbour, keep, or conceal such coral beads, or any part thereof, or who shall knowingly permit or suffer the same to be harboured, kept, or concealed, shall forfeit treble the value thereof. § 10.

And it is further enacted, that before any sugar imported into Great Britain, as being the produce of any British colony, plantation, or territory in the East Indies, shall be admitted to entry on payment of the duty imposed on such sugar by this act, and the table marked (B.) thereto annexed, the master or other person having or taking the charge or command of the ship or vessel in which any such sugar shall be imported, shall produce or deliver to the collector or other chief officer of the customs at the port of importation, a certificate under the hand and seal of the collector or other chief officer of the customs at the port or place in the East Indies where such sugar shall have been taken on board; or if no such collector or other chief officer of the customs shall be residing at such port or place, then a certificate shall be produced under the hand and seal of the principal officer of such port or place, or of the judge or commercial resident of the district, testifying that oath had been made before him, by the shipper of such sugar, that the same was really and *bona fide* the growth, produce, or manufacture of such British colony, plantation, or territory; and the master or other person having or taking the charge or command of such ship or vessel in which such sugar shall be imported into Great Britain or Ireland respectively, shall make oath before the collector or other chief officer at the port of importation, that the sugar so imported is the same as mentioned and referred to in the said certificate; and on failure of such certificate being produced, and proof on oath as aforesaid being made, such sugar shall be deemed and taken to be the growth, produce, or manufacture of some place in the East Indies, not being a British colony, plantation, or territory, and shall be charged with the duty imposed by this act, and the table marked (B), on such sugar of foreign growth, produce, or manufacture. § 11.

In all cases where at any time previous to the passing of this act any sugar of the growth, produce, or manufacture of any British colony, plantation, or territory in the East Indies, (such sugar being considered as clayed, or otherwise refined so as to be equal to the quality of clayed, and being subject and liable under any act or acts in force immediately before the passing of this act

to a duty of 2*l.* 5*s.* for every hundred weight thereof,) shall have been imported into any part of the United Kingdom, and any bond shall have been given or entered into, or any deposit shall have been made for securing the payment of 5*s.* per hundred weight, part of the said duty under any such act, and being the amount of the increase of duty on such sugar under any such act, every such bond shall be void, and the amount of every such deposit shall be restored and repaid under the directions of the commissioners of the customs. § 12.

And it is further enacted, that a proportion of the duties by this act granted on sugar, the produce of the East Indies, shall and may from time to time be suspended, in such and the like manner as any duties of customs payable on such sugars at any time before the passing of this act may be suspended under or by virtue of any act or acts in force immediately before the passing of this act. § 13.

The duties imposed and made payable on such sugar by this act shall continue in force until and upon the 1st day of July 1824. § 14.

From and after the 10th of October, 1823, staves of the growth and production of the British colonies or plantations in America, and imported directly from thence, above three inches and half of an inch in thickness, or above seven inches in breadth, and not exceeding sixty-three inches in length, shall be deemed clap boards, and be charged with duty accordingly; and above three inches and half of an inch in thickness, or above seven inches in breadth, and exceeding sixty-three inches in length, shall be deemed pipe boards, and shall be charged with duty accordingly. § 15.

From and after the 10th of October, 1823, the drawbacks allowed by the 1 & 2 Geo. IV. c. 37. on fir timber, or any wood chargeable as fir timber, are extended to the dimensions of timber being five inches square and not exceeding ten inches square, of the growth of Norway, and imported directly from thence, which shall be used or employed in any of the mines of tin, lead, or copper, in the counties of Devon and Cornwall, and under the like conditions and regulations as the drawbacks on timber of the dimensions mentioned and specified in the said act and table were paid and allowed. § 16.

After the 10th of October, 1823, wood for ship building of the growth of New South Wales, &c. may be imported duty-free. 17

The act of the 12 Geo. III. c. 50. which was made perpetual by 52 Geo. III. c. 18. respecting the import duty on oak bark, is repealed. § 18.

From and after the 10th of October, 1823, it shall and may be lawful to import into Great Britain any wine whatever, as well for sale as for private use, in packages, each of which shall contain at least three dozen reputed quart bottles or flasks, or six dozen reputed pint bottles or flasks, on payment of the same duties, as well of customs as excise, as French wine is or shall be subject to, in such manner, and under and according to such and the like



rules, regulations, conditions, and restrictions, and subject to such and the like penalties and forfeitures, as are provided and enacted in any act or acts of parliament with respect to French wine so imported into Great Britain, so far as the same are applicable thereto. § 19.

From and after the 10th of October, 1823, the drawbacks of the duties of customs and excise, upon the exportation of any wine, shall cease and determine, and in lieu and instead thereof there shall be paid and allowed, upon the exportation of any wine from Great Britain, a drawback of the full duties of customs and excise which shall have been paid upon the importation thereof into Great Britain: provided, that such drawback shall be paid and allowed under the rules, regulations, conditions, and restrictions, and subject to the like penalties and forfeitures, as former drawbacks upon wine, and shall only be allowed and paid on wine which shall be exported from Great Britain in packages, each containing not less than three dozen reputed quart bottles or flasks, or six dozen reputed pint bottles or flasks; any law, custom, or usage to the contrary notwithstanding. § 20.

Tobacco may be exported and imported between Great Britain and Ireland in ships not less than 70 tons. § 21.

From and after the 10th of October, 1823, it shall be lawful to export from Great Britain to Ireland, and from Ireland to Great Britain respectively, any goods, wares, or merchandize liable to duties on the importation thereof from foreign parts, and to import the same into either country from the other, subject and liable to such rules, regulations, conditions, restrictions, and provisions, as such goods are subject and liable to when removed and carried coastwise from one port in Great Britain to another port in the same; and any ship or vessel in which such goods, wares, or merchandize shall be conveyed from one country to the other, shall to all intents and purposes whatever be deemed and taken to be a coasting ship or vessel, and shall be liable to the payment of such duties only, and subject to such regulations and restrictions only, as coasting vessels are now by law subject and liable to. § 22.

All goods, wares, and merchandize which, at any time before the said 10th of October, 1823, shall have been or shall be imported into Ireland, and which at the time of such importation shall have been or shall be subject to duties lower than the duties payable on the importation of the like articles into Great Britain, shall, after the said 10th of October, 1823, remain and continue liable to such duties on importation into Great Britain, and shall be entitled to such drawbacks on exportation from Ireland to Great Britain, and shall be imported and exported under all such rules and regulations, as were applicable to such goods, wares, and merchandize, under any act or acts in force immediately before the said 10th of October, 1823, and as if this present act had not been passed. § 23.

And from and after the passing of this act, it shall be lawful for

any person or persons to export tobacco-pipe clay from any port in Great Britain, or in the isles of Guernsey, Jersey, Alderney, Sark, or Man, to any place whatever. § 24.

And before any blubber, train oil, head matter, or whale fins, the produce of fish or creatures living in the sea, imported into Great Britain, shall be admitted to entry on payment of the duty, as being taken and caught wholly by his majesty's subjects usually residing in any part of his majesty's dominions, and imported from any British colony, island, plantation, settlement, or territory, the master or other person having or taking the charge or command of the ship or vessel in which the same shall be imported, shall produce and deliver to the collector, or other chief officer of the customs, at the port of importation, a certificate under the hand and seal of the governor or deputy governor of such British colony, &c. or of the collector or other chief officer of the customs, of the port or place in such British colony, &c. where such train oil, &c. shall have been taken on board; or if no such governor or deputy governor or collector or other chief officer of the customs, shall be residing there, then a certificate shall be produced under the hand and seal of the naval officer, or other principal officer of such port or place, or of one of his majesty's justices of the peace for the district; or if there shall be no such naval officer, &c. then a certificate shall be produced of two principal inhabitants at the place of shipment, testifying that oath hath been made before him or them, that the same was really and *bona fide* the produce of fish or creatures living in the sea, actually caught and taken wholly by his majesty's subjects carrying on such fishery, and usually residing in some part of his majesty's dominions; and the master or other person having or taking the charge or command of the ship or vessel, shall make oath before the collector, or other chief officer at the port of importation, that the blubber, &c. so imported is the same as mentioned and referred to in the said certificate; and the importer or importers, consignee or consignees of such blubber, &c. shall also make oath before the collector or comptroller, or other proper officer of the customs, at the time of entry, that to the best of his or their knowledge and belief the blubber, &c. was actually caught and taken by British subjects usually residing in some part of his majesty's dominions; and on failure of such certificate being produced, and proof on oath as aforesaid being made, such blubber, &c. shall be deemed and taken to be of foreign fishing, and shall be charged with the duty by law imposed upon such articles of foreign fishing. § 25.

Blubber may be boiled into oil under the inspection of officers of customs; and oil so produced shall be entered: provided, that in case any blubber shall have been imported in any ship or vessel employed in the said fishery, and shall have been boiled into oil before the said 10th of October, 1823, such oil shall be admitted to entry, and the duty shall be charged thereon, according to the regulations and directions of this act. § 26.

The duties on blubber, &c. taken at Newfoundland or on the



Labrador coast are suspended, so long as bounties are paid for the encouragement of the fisheries in those seas. § 27.

So much of the 10 Geo. I. c. 10; 4 Geo. II. c. 14; and 51 Geo. III. c. 58. as relates to the prohibition on the importation of chocolate ready made, cocoa paste, and cocoa-nut shells, is repealed. § 28.

Pease for seed may be imported, whatever the price, on payment of the duty. § 29.

And at any time after the 10th of October, 1823, it shall be lawful to import into any part of the United Kingdom of Great Britain and Ireland, seeds of any sort commonly made use of for the purpose of extracting oil therefrom, although the price of middling British rape seed shall be less than 17l. 10. per last, and whatever the price of such British rape seed may be; subject nevertheless to the payment of the duties of customs. § 30.

The bounty on camlets of mohair yarn, under 1 & 2 Geo. IV. c. 91. is repealed; but the bounties shall continue payable in respect of camlets exported within three months after the 10th of October, 1823. § 31.

And it is further enacted, that there shall be paid to any person or persons, who, at any time after the 5th of July, 1823, shall really and *bona fide* export from any part of the United Kingdom of Great Britain and Ireland by way of merchandize, certain silk manufactures made in any part of the said United Kingdom, the several bounties or allowances mentioned, specified, and set forth in the table marked (E) to this act annexed, in lieu of all former bounties or allowances.\* § 32.

And from and after the 10th of October, 1823, upon the exportation from Great Britain to any place except Ireland, and upon the exportation from Ireland to any place except Great Britain, of any beef, pork, tongues, ham or bacon, salted in Great Britain or Ireland, there shall be paid and allowed an allowance or bounty of one shilling for every one hundred pounds weight thereof, until the 5th of January, 1825; and such bounty or allowance shall be paid and allowed under the rules and regulations of any act or acts in force granting an allowance or bounty or articles of the like nature in Great Britain or Ireland respectively, before the 26th of July, 1822. § 33.

And it is further enacted, that at any time after the passing of this act, it shall and may be lawful for his majesty, by his order in council, to declare and direct that all the duties aforesaid, or any of them, may be placed under the sole management of the commissioners of customs, or under the sole management of the commissioners of excise, as shall be expressed and directed in such order, and for a time to be mentioned in such order; and such order in council shall be published in the London Gazette; and all drawbacks allowed by law upon the exportation of any articles liable to such duties, shall be allowed and made payable under the direction of the commissioners so named in such order in council;

\* The Schedules annexed to this Act being very long, the reader is referred to the Act itself for such further information as he may require respecting them

and the insertion in the London Gazette of any such order in council shall be good and sufficient evidence in all cases, that such order was made, and was of the purport and effect published and contained in such Gazette, without producing or giving any other evidence of any such order in council. § 34.

Section 35 relates to the management of the duties by the boards of customs and excise.

From and after the 10th of October, 1823, no drawback whatever shall be paid or payable upon any goods, wares, or merchandize entered or shipped for exportation from any part of the United Kingdom of Great Britain and Ireland, in any case where such goods, wares, or merchandize shall be unmerchantable by reason of damage or decay, and shall thereby become and shall be of less value for home consumption than the amount of the drawback payable or allowable by law in respect thereof, or in respect of goods, wares, or merchandize of the denomination under which such goods, wares, and merchandize shall be entered for exportation. And if upon examination by the proper officers of customs of any goods, wares, or merchandize entered or shipped for exportation on which any drawback shall be claimed, such goods, wares, or merchandize shall be found to be so unmerchantable, and of less value for home consumption than the amount of the drawback claimed thereon, or payable or allowable as aforesaid; then and in every such case, all such goods, wares, or merchandize, with the packages containing the same, shall be forfeited, and the owner or proprietor of such goods, wares, or merchandize, or the person who shall cause the same to be entered for exportation, shall for each such offence forfeit the sum of 200*l.* or treble the amount of the drawback so claimed, at the election of his majesty's attorney general, or of the commissioners of customs or excise for the time being. § 36.

Hats or bonnets which were prohibited to be imported into Great Britain by the 10 Geo. III. c. 43. may by this act be imported. § 37.

And whereas by the 13 & 14 Car. II. c. 11. intituled, "*An act for preventing frauds and regulating abuses in his majesty's customs,*" it is amongst other things enacted, that the master or purser of any ship or vessel arriving from parts beyond the seas shall make a just and true entry upon oath of the burthen, contents, and lading of every such ship or vessel, with the particular marks, numbers, qualities, and contents of every parcel of goods therein laden, to the best of his knowledge, also when and in what port she took in her lading, of what country built, how manned, who was master during the voyage, and who are the owners thereof: and whereas it is expedient to make further and other provisions for carrying into effect the purposes of the said recited act: it is therefore enacted, that from and after the 10th of October, 1823, it shall be lawful for the collector or other chief officer of the customs at the port where such ship or vessel shall arrive, to call upon the captain, master, purser, or other person (so making any



such oath as aforesaid), to answer all such questions relating to his voyage, and to the cargo laden on board his vessel, as shall be demanded of him, or to produce any bill or bills of lading, or a true copy thereof, for the whole or any and every part of the cargo laden on board his said ship or vessel; and in case of refusal to answer such questions, or to produce such bill or bills of lading, or such copy, or if the bill of lading or copy so produced shall be a false bill of lading or copy, or if any bill of lading shall be signed or uttered by such captain, master, owner, or other person, and the goods expressed in the same shall not have been *bona fide* shipped on board the said ship or vessel, or if the bill of lading shall not have been signed by the said captain, master, purser, or other person, or the copy made or received, previous to his leaving the country from which he shall have arrived, then and in every such case such captain, master, purser, or other person, shall forfeit and pay the sum of 100*l.* § 38.

And whereas by the said recited act of the 13 & 14 Car. II. officers of his majesty's customs are authorized and empowered to enter on board any ship or vessel arriving from foreign parts beyond the seas, and from thence to bring on shore all goods for which the duties are not paid or compounded for within twenty days after the entry of the ship or vessel, and to secure the same in his majesty's warehouse until the duties thereon are fully paid: and whereas it frequently happens that the officers of the customs or excise stationed on board such ships or vessels for the security of the revenue are detained on account of a few packages only of the cargo of such ship or vessel being left on board, whereby considerable expence is unnecessarily incurred; it is therefore enacted, that in all cases where the cargo of any ship or vessel arriving in any port of Great Britain from parts beyond the seas shall have been discharged, with the exception only of a few packages, it shall be lawful for the proper officer or officers of his majesty's customs, or excise (where that revenue is concerned), to bring on shore all such remaining packages, and to deposit the same in his majesty's warehouse at the port of importation, for the security of the duties thereon, although twenty days may not have expired from the entry of such ship or vessel. § 39.

And from and after the 10th of October, 1823, whenever any goods, wares, or merchandize, shall be landed in Great Britain on bills of sight, bills of view, or sufferance, the importer, owner, consignee, or their agent, at whose instance or request such goods, wares, and merchandize shall be so landed, shall make perfect entry of all such goods, wares, and merchandize, with the proper officer or officers of the customs, and excise (where that revenue is concerned), and to pay all duties which may be due and payable upon the importation of such goods, wares, and merchandize, within three days next after the landing thereof; and in case of non-payment of all such duties, it shall and may be lawful for the proper officer or officers of the customs or excise, to convey all such goods, wares, or merchandize to, and to deposit the same

in his majesty's warehouse at the port of importation, there to remain for the space of one calendar month; and if the importer, owner, consignee, or their agent, shall refuse or neglect to enter such goods, wares, and merchandize, and to pay the full duties thereon, together with the charges of warehouse rent, on or before the expiration of such calendar month, all such goods, wares, and merchandize shall be sold under the direction of the commissioners of customs or excise, and the produce thereof shall be applied towards payment of the duties and charges of warehouse rent thereon; and the overplus, if any, shall be paid to the proprietor, or other person authorized to receive the same. § 40.

Warehouse rent shall be charged on goods lodged in the king's warehouses. § 41.

If the duties on perishable goods are not paid in one month, or goods of other description within three months, such goods shall be sold, to pay the duties and other charges upon them. § 42.

From and after the 10th October, 1823, if any goods, wares, or merchandize intended to be exported from Great Britain, and liable to the payment of any duty on the exportation thereof, shall be so laden or put off from any quay, wharf, or other place on land, into any ship, vessel, lighter, boat, or bottom, or shall be brought to any quay, wharf, or other place in Great Britain, for the purpose of being shipped for exportation, and upon examination of such goods, wares, or merchandize by the proper officer or officers of his majesty's customs, such goods, wares, and merchandize shall be found not to agree with the indorsement upon the coquet, or the copy of the coquet delivered to the proper officers for the shipment of such goods, that then and in every such case the whole of the goods contained in any package not so agreeing with the indorsement upon the coquet, or copy of the coquet as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of his majesty's customs. § 43.

And for preventing frauds upon his majesty's revenue on the importation of manufactured goods which pay duty according to the value thereof, by importing some part of a manufactured article at one port, and the remaining part of such article at another port, or by importing such parts at different times at the same port, and placing a small value upon such goods in consequence of their being in an imperfect state: it is enacted, that from and after the 10th October, 1823, it shall not be lawful to import any distinct or separate part of any article of foreign manufacture into the United Kingdom of Great Britain and Ireland, not accompanied by the other part, or all the other parts of such article, so as to be complete and perfect; and any such distinct or separate part of any article of foreign manufacture which shall be brought into the United Kingdom, not accompanied by the other part, or all the other parts of the same article, so as to be complete and perfect, shall be forfeited, and shall and may be seized by any officer or officers of his majesty's customs. § 44.

And whereas it is expedient, for the convenience of trade, and



the ease and accommodation of merchants, that the oaths now required by law to be taken with respect to the import and export of certain goods, wares, and merchandize, should be administered by one only of the proper officers of the customs, and that the signature of one officer to certain documents should be sufficient in law ; it is therefore enacted, that from and after the 10th October, 1823, in all cases where any oath is by any act or acts in force required to be taken, relating to the import, export, or carrying coastwise of any goods, wares, or merchandize, such oath shall and may be administered by the collector or other proper officer of the customs ; and that the signature of the collector or other proper officer of the customs to any document relating to the entering or clearing of any ships or vessels, or relating to the import, export, or carrying coastwise of any goods, wares, or merchandize (save and except such documents as relate to the registry of ships, or to the payment or receipt of money) shall be deemed sufficient, and such documents (except as aforesaid) shall be as good and valid to all intents and purposes whatsoever, as if the same had been signed by two or more officers of customs. § 45.

And whereas it is expedient, for the better security of the revenue, and of the merchants and traders, to establish regulations for restraining improper persons from acting as agents for transacting business at the custom house in London ; it is therefore enacted, that from and after the expiration of one calendar month next after the passing of this act, it shall not be lawful for any person to act as an agent for transacting any business at the said custom house, which shall relate to the entry or clearance of any ship or ships, or to the clearing of any goods or baggage, or the passing of any entry whatever, upon which any revenue of customs shall be due or payable, unless such persons shall be authorized so to do by licence under the hands and seals of the commissioners of customs for the time being ; and it shall be lawful for the said commissioners, or any two of them, and they are hereby authorized and empowered to grant any such licence to any person or persons who may require the same ; and in such cases it shall be lawful for the said commissioners to require a bond to be given by every person to whom such licence shall be granted, for the purpose of acting as such agent respectively, with one sufficient surety, in the sum of 1000*l.* conditioned for the faithful and incorrupt conduct of every such person, and of his clerk acting for him as herein provided, and to deliver up such licence if the same shall be revoked within seven days after the notice of such revocation. § 46.

Provided always, that the said commissioners of customs shall grant any such licence, without such bond or surety as aforesaid, to any person being one of the sworn brokers of the city of London, upon the production by any such person of a certificate signed by the lord mayor, or by the proper officer of the court of aldermen of the said city. § 47.

Provided also, that nothing herein contained shall extend or be construed to extend to authorize the commissioners of the customs to grant any licence to any officer or clerk in the custom house at London to act as such agent, nor to prevent any officer or clerk in the long room of the said custom house from passing entries under the authority of the 51 Geo. III. c. 71. intituled, "*An act for the abolition and regulation of certain offices in the customs,*" without any such licence as is required by this act. § 48.

The treasury may revoke licences; and after notice of such revocation, licence to be void. § 49, 50.

If any person not being licensed to transact business in manner hereinbefore recited, or whose licence shall be revoked, or who if licensed shall be in partnership with any person or persons who shall not be licensed, shall act as an agent, every such person shall for every such offence forfeit the sum of 100*l.* § 51.

Nothing in this act contained shall extend or be construed to extend to prevent any clerk who shall be *bona fide* employed in the service of any merchant, or of any such sworn broker, or of any two or more merchants or brokers in copartnership, duly authorized by such merchants, &c. from acting for such merchant or merchants, or broker or brokers, in transacting any business for or on behalf of his employer at the custom house: provided always, that such clerk shall be allowed to act only for the merchant or merchants, or broker or brokers in copartnership, in whose service he shall actually be engaged, and for whom he shall be authorized to act by writing under his or their hand or hands, and not for any other merchant or broker, unless such clerk shall be duly licensed so to do under the authority of this act. § 52.

If, at any time after the passing of this act, any person or persons shall make and attest any declaration of the value of any goods, wares, or merchandize imported, not being the importer or proprietor or consignee of the goods, wares, and merchandize mentioned in such declaration, or not having proper and sufficient authority from the real importer, proprietor, or consignee of such goods, wares, or merchandize, every such person shall forfeit the sum of 100*l.* § 53.

And it is further enacted, that whenever any broker, agent, or clerk, shall make any application to any officer or officers of the customs to transact any business relating to the entry or clearance of any ship or ships, or to goods, wares, or merchandize imported or exported, or to the revenue of customs thereon, and such officer or officers shall have any doubt whether such broker, agent, or clerk has any authority from the merchant or merchants, or other person or persons in whose name or on whose behalf any such broker, agent, or clerk shall make such application, it shall be lawful for such officer or officers, to require any such broker, agent, or clerk respectively, to produce a written authority from the merchant or other person in whose name or on whose behalf any such application shall be made; and in default of the production of such written authority, it shall be lawful for such officer



or officers to refuse to transact any such business relating to the entry or clearance of any ship or ships, or to such goods, wares, or merchandize, or the revenue of customs thereon, or to do any act, matter, or thing required to be done by any such officer in the execution of his duty, in respect to such ship or ships, or to such goods, wares, and merchandize, or the revenue of customs thereon. § 54.

No clerk of any licensed agent is to act without producing authority from such agent. § 55.

Duties to be paid into the exchequer, and to be carried to the consolidated fund. § 56.

Nothing in this act contained shall extend or be construed to extend to affect or alter the hereditary revenue of his majesty, his heirs and successors, in Scotland, or other revenues there granted to his majesty king George the Second during his life, and reserved to his late majesty king George the Third during his life by an act made in the first year of the reign of his said late majesty, and reserved to his present majesty during his life by an act made in the first year of his present majesty's reign; but the same, and the civil list establishment payable out of the same, shall continue to be paid in like manner as heretofore. § 57.

Sections 58, 59, & 60, relate to the levying and payment of the duties, the recovery of penalties, and the limitation of actions.

And it is further enacted, that nothing in this act contained shall extend or be deemed or construed to extend to affect, alter, lessen, diminish, or prejudice the rights, privileges, liberties, franchises, powers, or authorities of the mayor and commonalty and citizens of the city of London, or of the lord mayor of the said city for the time being, or the office of package and scavage, or of gauger of wines and other gaugable articles, or the duties, fees, profits, or emoluments incident thereto, belonging to the said mayor and commonalty and citizens, or in respect to the admission, government, and regulation of the brokers within the said city and the liberties thereof. § 61.

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## TO AMEND THE LAWS RESPECTING MARRIAGES.

4 Geo. IV. c. 76.

By this act is enacted, that from the 1st of November, 1822, so much of the 26 Geo. II. c. 33. intituled, "*An act for the better preventing of clandestine marriages,*" as was in force immediately before the passing of this act; and also an act passed in the present session of parliament, intituled, "*An act to repeal certain provisions of an act passed in the third year of his present majesty, intituled, 'An act to amend certain provisions of the twenty-sixth of George the Second, for the better preventing of clandestine marriages;*" shall be repealed; save and except as to any acts, matters, or things done under the provisions of the said recited acts,

or either of them, before the said 1st of November, as to which the said recited acts shall respectively be of the same force and effect, as if this act had not been made; save also and except so far as the said recited acts, or either of them, repeal any former act, or any clause, matter, or thing therein contained. § 1.

And it is further enacted, that from and after the 1st of November, 1823, all banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel, in which chapel banns of matrimony may now or may hereafter be lawfully published, of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubrick prefixed to the Office of Matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published), immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or in any such chapel as aforesaid belonging to such parish or chapelry wherein each of the said persons shall dwell; and all other the rules prescribed by the said rubrick concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed: and that in all cases where banns shall have been published, the marriage shall be published in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever. § 2.

The bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel having a chapelry thereunto annexed may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize, by writing under his hand and seal, the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively; and such consent, together with such written authority, shall be registered in the registry of the diocese. § 3.

In every chapel in respect of which such authority shall be given as aforesaid, there shall be placed in some conspicuous part of the interior of such chapel a notice in the words following: "Banns may be published, and marriages solemnized, in this chapel." § 4.

All provisions relative to marriage registers extended to chapels so authorized as aforesaid. § 5.

And on or before the said 1st of November, the churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized, shall provide a proper book of substantial paper, marked and ruled respectively in the manner directed for the register book of marriages; and the banns shall be published from



the said register book of banns by the officiating minister, and not from loose papers, and after publication shall be signed by the officiating minister, or by some person under his direction. § 6.

Notice of the names and place and time of abode of parties to be given to the minister seven days before the publication of banns. § 7.

Ministers are not punishable for marrying minors without the consent of parents, &c. after the publication of banns, unless they have notice of dissent; if dissent is publicly declared, the publication of banns is void. § 8.

Republication of banns is necessary, if marriage is not solemnized within three months after the first publication. § 9.

And no licence of marriage shall, from and after the said 1st of November, be granted by any archbishop, bishop, or other ordinary, or person having authority to grant such licences, to solemnize any marriage in any other church or chapel than in the parish church or in some public chapel of or belonging to the parish or chapelry within which the usual place of abode of one of the persons to be married shall have been for the space of fifteen days immediately before the granting of such licence. § 10.

And if any caveat be entered against the grant of any licence for a marriage, such caveat being duly signed by or on behalf of the person who enters the same, together with his place of residence and the ground of objection on which his caveat is founded, no licence shall issue till the said caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the register, that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same. § 11.

Parishes where there is no church or chapel, and also extra-parochial places, are deemed to belong to any adjoining parish for the purposes of this act. § 12.

And where churches are demolished or are under repair, banns may be proclaimed in a church or chapel of an adjoining parish, &c. § 13.

And for avoiding all fraud and collusion in obtaining of licences for marriage, that before any such licence be granted, one of the parties shall personally swear before the surrogate or other person having authority to grant the same, that he or she believeth that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any ecclesiastical court, to bar or hinder the proceeding of the said matrimony, according to the tenor of the said licence; and that one of the said parties hath, for the space of fifteen days immediately preceding such licence, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person

or persons whose consent to such marriage is required under the provisions of this act has been obtained thereto : provided always, that if there shall be no such person or persons having authority to give such consent, then upon oath made to that effect by the party requiring such licence, it shall be lawful to grant such licence notwithstanding the want of any such consent. § 14.

Bond not required before granting any licence. § 15.

And it is further enacted, that the father, if living, of any party under twenty-one years of age, such party not being a widower or widow ; or if the father shall be dead, the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them ; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried ; and if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the court of chancery, if any, or one of them, shall have authority to give consent to the marriage of such party : and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent. § 16.

And in case the father or fathers of the parties to be married, or of one of them, so under age as aforesaid, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the lord chancellor, lord keeper, or the lords commissioners of the great seal of Great Britain for the time being, master of the rolls, or vice-chancellor of England, who is and are respectively hereby empowered to proceed upon such petition in a summary way ; and in case the marriage proposed shall upon examination appear to be proper, the said lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, master of the rolls, or vice-chancellor, shall judicially declare the same to be so ; and such judicial declaration shall be deemed and taken to be as good and effectual, to all intents and purposes, as if the father, guardian or guardians, or mother of the person so petitioning had consented to such marriage. § 17.

The surrogate to take oath of office, and to give bond in the sum of 100*l.* for the faithful discharge of his duty. § 18.

If marriages by licence be not solemnized within three months, a new licence must be obtained. § 19.

The right of the archbishop of Canterbury to grant special licences is reserved. § 20.

And it is further enacted, that if any person shall, from and after the said 1st of November, solemnize matrimony in any other place than a church, or such public chapel wherein banns may be lawfully published, or at any other time than between the hours



of eight and twelve in the forenoon, unless by special licence from the archbishop of Canterbury, or shall solemnize matrimony without due publication of banns, unless licence by marriage be first had and obtained from some person or persons having authority to grant the same; or if any person falsely pretending to be in holy orders shall solemnize matrimony according to the rites of the Church of England; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of fourteen years: provided, that all prosecutions for such felony shall be commenced within the space of three years after the offence committed. § 21.

And if any person shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or licence from a person or persons having authority to grant the same, first had and obtained, or shall knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever. § 22.

And if any valid marriage solemnized by licence shall, after the said 1st of November next, be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, contrary to the provisions of this act, by means of such party falsely swearing as to any matter or matters to which such party is herein-before required personally to swear, such party wilfully and knowingly so swearing; or if any valid marriage by banns shall, after the said 1st of November next, be procured by a party thereto to be solemnized by banns between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, such party knowing that such person as aforesaid under the age of twenty-one years had a parent or guardian then living, and that such marriage was had without the consent of such parent or guardian, and knowing that banns had not been duly published according to the provisions of this act, and having knowingly caused or procured the undue publication of banns, then and in every such case it shall be lawful for his majesty's attorney general (or for his majesty's solicitor general, in case of the vacancy of the office of attorney general) by information in the nature of an English bill in the court of chancery or court of exchequer, at the relation of a parent or guardian of the minor, whose consent has not been given to such marriage, and who shall be responsible for any costs incurred in such suit, such parent or guardian previously making oath as hereinafter required, to sue for a forfeiture of all estate, right, title, and interest in any property which hath accrued or shall accrue to the party so offending by force of such marriage; and such court shall

have power in such suit to declare such forfeiture, and thereupon to order and direct that all such estate, right, title, and interest in any property as shall then have accrued or shall thereafter accrue to such offending party, by force of such marriage, shall be secured under the direction of such court for the benefit of the innocent party, or of the issue of the marriage, or of any of them, in such manner as the said court shall think fit, for the purpose of preventing the offending party from deriving any interest in real or personal estate, or pecuniary benefits from such marriage; and if both the parties so contracting marriage shall, in the judgment of the court, be guilty of any such offence as aforesaid, it shall be lawful for the said court to settle and secure such property, or any part thereof, immediately for the benefit of the issue of the marriage, subject to such provisions for the offending parties, by way of maintenance or otherwise, as the said court, under the particular circumstances of the case, shall think reasonable, regard being had to the benefit of the issue of the marriage during the lives of their parents, and of the issue of the parties respectively by any future marriage, or of the parties themselves, in case either of them shall survive the other: provided also, that no such information as aforesaid shall be filed, unless it shall be made out to the satisfaction of the attorney or solicitor general, before he files the same, by oath or oaths sworn before one of the masters in ordinary in chancery, or before one of the barons of the exchequer, and which they are hereby respectively empowered to administer, that the valid marriage to be complained of in such information hath been solemnized in such manner and under such circumstances, as in the judgment of the said attorney or solicitor general are sufficient to authorize the filing the information under the provisions of this act, and that such marriage has been solemnized without the consent of the party or parties at whose relation such information is proposed to be filed, or of any other parent or guardian of the minor married, to the knowledge or belief of the relator or relators so making oath; and that such relator or relators had not known or discovered that such marriage had been solemnized more than three months previous to his or their application to the attorney or solicitor general. § 23.

And all agreements, settlements, and deeds, entered into or executed by the parties to any marriage, in consequence of or in relation to which marriage such information as aforesaid shall be filed, or by either of the said parties, before and in contemplation of such marriage, or after such marriage, for the benefit of the parties or either of them, or their issue, so far as the same shall be contrary to or inconsistent with the provisions of such security and settlement as shall be made by or under the direction of such court as aforesaid, under the authority of this act, shall be absolutely void, and have no force or effect. § 24.

Any original information to be filed for the purpose of obtaining a declaration of any such forfeiture as aforesaid, shall be filed within one year after the solemnization of the marriage by which



such forfeiture shall have been incurred, and shall be prosecuted with due diligence; and in case any person or necessary party to any such information shall abscond, or be or continue out of England, it shall be lawful for the court in which such information shall be filed to order such person to appear to such information, and answer the same, within such time as to such court shall seem fit; and to cause such order to be served on such person at any place out of England, or to cause such order to be inserted in the London Gazette, and such other British or foreign newspapers as to such court shall seem proper; and in default of such person appearing and answering such information within the time to be limited as aforesaid, to order such information to be taken as confessed by such person, and to proceed to make such decree or order upon such information as such court might have made if such person had appeared to and answered such information; provided always, that in case the person at whose relation any such suit shall have been instituted shall die pending such suit, it shall be lawful for the court of chancery, if such court shall see fit, to appoint a proper person or proper persons at whose relation such suit may be continued. § 25.

After the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of fifteen days as aforesaid, was in the parish or chapelry where the marriage was solemnized: nor shall any evidence in either of the said cases be received to prove the contrary, in any suit touching the validity of such marriage. § 26.

And in no case whatsoever shall any suit or proceedings be had in any ecclesiastical court, in order to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*. § 27.

And from and after the said 1st of November, all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage an entry thereof shall be made in the register book provided and kept for that purpose as by law is now directed, or as shall be hereafter directed; in which entry or register it shall be expressed that the said marriage was celebrated by banns or licence, and if both or either of the parties married by licence be under age, not being a widower or widow, with consent of the parents or guardians, as the case should be; and such entry shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses. § 28.

Persons convicted of making a false entry, or of forging, &c.

any such entry, or of forging, &c. any licence, or of destroying such register, to be transported for life. § 24.

This act, or any thing therein contained, shall not extend to the marriages of any of the royal family. § 30.

And nothing in this act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively. § 30, 31.

And it is further enacted, that two printed copies of this act shall, as soon as conveniently may be after the passing of this act be provided by his majesty's printer, and transmitted to the officiating ministers of the several parishes and chapelries in England respectively; one of which copies shall be deposited and kept with the book containing the marriage register of such parish or chapelry, in the chest or box provided for the custody of the same. § 32.

This act shall extend only to that part of the United Kingdom called England. § 33.

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#### REGISTERING OF SHIPS. 4 Geo. IV. c. 41.

By this act the following acts relative to the registering of vessels are repealed; *viz.*

- 7 & 8 W. III. c. 22. so far as relates in any way to the registering of ships and vessels.
- 15 Geo. II. c. 31. so far as relates in any way to the proof to be given that the ship or vessel belongs to British subjects, before the same is permitted to trade; and as relates to the liberty to be given to trade where the certificate of the registry hath been lost; and as relates to the registering of a ship or vessel *de novo*.
- 26 Geo. III. c. 60. intituled, "*An act for the further increase and encouragement of shipping and navigation,*"
- 27 Geo. III. c. 19. so far as relates in any way to the registering of ships or vessels.
- 28 Geo. III. c. 34. so far as relates to masters of ships or vessels detaining the certificates of registry of the same.
- 34 Geo. III. c. 68. so far as relates to the transfer or contract, or agreement for transfer, and the alteration of property in any ship or vessel, and as relates to the certificate of registry being withheld or detained by the master of the ship or vessel, and as relates to the registering a ship or vessel *de novo*, under the several circumstances therein mentioned.
- 48 Geo. III. c. 70. intituled, "*An act to provide that British ships which shall be captured by the enemy, and shall afterwards become the property of British subjects shall not be entitled to the privileges of British ships.*"
- 49 Geo. III. c. 41. intituled, "*An act to amend an act made in*



*the forty-eighth year of his present majesty, to provide that British ships captured by the enemy, becoming the property of British subjects, shall not be entitled to the privileges of British ships.*

55 Geo. III. c. 116. so far as relates in any way to the registering of ships or vessels in India.

59 Geo. III. c. 5. intituled, "*An act to ascertain the tonnage of vessels propelled by steam.*"

1 Geo. IV. c. 9. so far as relates to the registering of ships or vessels at Malta, Gibraltar, and Heligoland.

And also so much of any and every other act passed in Great Britain or in Ireland, as relates in any way to the registering of ships and vessels. § 1.

And after the 31st of December, 1823, no ship or vessel having a deck, or being of the burthen of fifteen tons or upwards, shall be entitled to any of the privileges or advantages of a British ship, until the persons claiming property therein shall have caused the same to be registered in manner hereinafter mentioned, and shall have obtained a certificate thereof; and on the back of such certificate shall be an account of the number of sixty-fourth shares held by each of the owners mentioned and described therein. But nothing in this act shall extend to require any vessel not exceeding the burthen of thirty tons, and not having a whole or a fixed deck, and being employed solely in the fishery on the banks or shores of Newfoundland, and of the parts adjacent, or on the banks or shores of the provinces of Quebec, Nova Scotia, or New Brunswick, adjacent to the Gulf of St. Lawrence, and on the North of Cape Canso, or of the islands within the same, or in trading coastwise within the said limits, to be registered, so long as such vessel shall be solely so employed. § 2.

The persons authorized to make such registry and grant such certificate, are—

The collector and comptroller of his majesty's customs, of any port in the United Kingdom of Great Britain and Ireland, and in the isle of Man.

The principal officers of his majesty's customs, in the islands of Guernsey or Jersey, together with the governor, lieutenant-governor, or commander-in-chief of those islands.

The collector and comptroller of his majesty's customs in any port, in the colonies, plantations, islands, and territories to his majesty belonging in Asia, Africa, and America, together with the governor, lieutenant-governor, or commander-in-chief of such colonies, &c.

The collector of duties at any port, in the territories under the government of the East India Company, and other territories belonging to his majesty within the limits of the charter of the said company, payable to the said company; or any other person of the rank, in the said company's service, of senior merchant, or of six years standing in the said service,

being respectively appointed to act in the execution of this act by any of the governments of the said company in India, in any ports in which there shall be no collector and comptroller of his majesty's customs.

The governor, lieutenant-governor, or commander-in-chief of Malta, Gibraltar, Heligoland, and Cape of Good Hope.

Provided always, that no ship or vessel registered by such collector or other person in India shall be entitled to the privileges and advantages of British ships, in any trade or voyages beyond the limits of the said company's charter, other than and except such as are specified in the 53 Geo. III. or other subsequent acts made or to be made for the further regulation of the trade to and from such places: provided also, that no ship or vessel shall be registered at Malta, Gibraltar, or Heligoland, except such as are wholly of the built of those places respectively; and that such ships or vessels so registered shall not be entitled to the privileges and advantages of British ships in any trade between the said United Kingdom and any of the colonies, plantations, islands, or territories in America to his majesty belonging. § 3.

In case any ship or vessel, not being duly registered, and not having obtained such certificate of registry as aforesaid, shall exercise any of the privileges of a British ship, the same shall be subject to forfeiture, with all her guns, furniture, ammunition, tackle, and apparel, and may be seized by any officer of customs. § 4.

No ship or vessel shall be registered, or, having been registered, shall be deemed to be duly registered, except such as are wholly of the built of the United Kingdom, or of the Isle of Man, of the islands of Guernsey or Jersey, or of the colonies, plantations, islands, or territories in Asia, Africa, or America, or of Malta, Gibraltar, or Heligoland, which belong to his majesty, his heirs or successors, at the time of the building of such ships; or such ships or vessels as shall have been condemned in any court of admiralty, or as shall have been condemned in any competent court for the breach of the laws made for the prevention of the slave trade, and which shall wholly belong to his majesty's subjects. § 5.

No ship or vessel shall continue to enjoy the privileges of a British ship after the same shall have been repaired in a foreign country, if such repairs shall exceed the sum of 20s. for every ton, unless such repairs shall have been necessary by reason of extraordinary damage, to enable her to perform the voyage in which she shall have been engaged, and to return to some port or place in his majesty's dominions; and whenever any ship which has been so repaired in a foreign country, shall arrive at any port in his majesty's dominions, as a British registered ship, the master shall, upon the first entry thereof, report upon oath to the collector and comptroller of his majesty's customs, that such ship or vessel has been so repaired, under penalty of 20s. for every ton; and if it shall be proved to the satisfaction of the commissioners



of his majesty's customs, that such ship was sea-worthy at the time when she departed, and that no greater quantity of such repairs have been done than was necessary as aforesaid, it shall be lawful for the said commissioners to direct the collector and comptroller of the port where such ship shall have arrived, to certify on the certificate of the registry that the privileges of the said ship have not been forfeited, notwithstanding the repairs which have been done in a foreign country. § 6.

Ships declared unseaworthy, to be deemed ships lost or broken up, and shall never again be entitled to the privileges of a British-built ship, for any purposes of trade or navigation. § 7.

No British ship which has been or shall hereafter be captured by, or sold to foreigners, shall again be entitled to the privileges of a British ship. But nothing herein shall extend to prevent the registering of any ship or vessel, which shall be condemned in any court of admiralty as prize of war, or in any competent court for breach of laws made for the prevention of the Slave Trade. § 8.

Ships are to be registered at the port to which they belong; unless the commissioners of customs shall see fit to authorize any ship or vessel to be registered in any other port, by an order under their hands. And at every port where registry shall be made, a book shall be kept by the collector and comptroller, in which all the particulars contained in the certificate of registry shall be duly entered: and every register shall be numbered in progression, beginning such progressive numeration at the commencement of each year. § 9.

Every ship or vessel shall be deemed to belong to some port at or near to which some of the owners who shall take and subscribe the oath required shall reside; and whenever such owners shall have transferred their share in such ship, the same shall be registered *de novo*, before she shall sail or depart from the port to which she shall then belong; but if the registry *de novo* cannot be made in due time, the ship may go one voyage, with permission indorsed on certificate of registry. And ships built in foreign possessions, for owners resident in the United Kingdom, may proceed on their voyage, on receiving a certificate from the collector, &c. § 10.

No person who has taken the oaths of allegiance to any foreign state, except under the terms of some capitulation, unless he shall afterwards become a denizen or naturalized subject of the United Kingdom, nor any person usually residing in any country not under the dominion of his majesty, unless he be a member of some British factory, or agent for or partner in any house or copartnership actually carrying on trade in Great Britain or Ireland, shall be entitled to be the owner in whole or in part, directly or indirectly, of any ship required and authorized to be registered by this act. § 11.

The 12th and 13th sections relate to the oath to be taken by the subscribing owners previous to registry.

Vessels are to be surveyed previous to registry, and a certificate of the survey to be given to the collector of the customs, the owner or master concurring therein. § 14.

For the purpose of ascertaining the tonnage of ships or vessels, the rule for admeasurement shall be as follows; (*videlicet*)—The length shall be taken on a straight line along the rabbet of the keel from the back of the main stern post to a perpendicular line from the fore part of the main stem under the bowsprit, from which subtracting three-fifths of the breadth, the remainder shall be esteemed the just length of the keel to find the tonnage; and the breadth shall be taken from the outside of the outside plank in the broadest part of the ship, whether that shall be above or below the main wales, exclusive of all manner of doubling planks that may be wrought upon the sides of the ship; then multiplying the length of the keel by the breadth so taken, and that product by half the breadth, and dividing the whole by ninety-four, the quotient shall be deemed the true contents of the tonnage. § 15.

In cases where it may be necessary to ascertain the tonnage of any ship or vessel when afloat, according to the foregoing rule, the following method shall be observed; (that is to say)—Drop a plumb line over the stern of the ship, and measure the distance between such line and the after part of the stern post at the load water mark; then measure from the top of the plumb line, in a parallel direction with the water, to a perpendicular point immediately over the load water mark at the fore part of the main stem, subtracting from such measurement the above distance, the remainder will be the ship's extreme, from which is to be deducted three inches for every foot of the load draught of water for the rake abaft, also three-fifths of the ship's breadth for the rake forward, the remainder shall be esteemed the just length of the keel to find the tonnage; and the breadth shall be taken from outside to outside of the plank, in the broadest part of the ship, whether that shall be above or below the main wales, exclusive of all manner of sheating or doubling that may be wrought on the side of the ship; then multiplying the length of the keel for tonnage by the breadth so taken, and that product by half the breadth, and dividing by ninety-four, the quotient shall be deemed the true contents of the tonnage. § 16.

In steam vessels, the engine room to be deducted from the length. § 17.

Tonnage when ascertained is to be ever after deemed the tonnage; unless it shall happen that any alteration has been made in the form and burthen of such ship or vessel, or it shall be discovered that the tonnage of such ship or vessel had been erroneously taken and computed. § 18.

At the time of registry, bond is to be given by the master and such of the owners as shall personally attend, as follows:—

If the ship or vessel shall be a decked vessel, or be above the burthen of 15 tons, and not exceeding 50 tons, in the penalty of £100

50       -       -       -       100       -       -       -       300



100	-	-	-	-	200	-	-	-	-	500
200	-	-	-	-	300	-	-	-	-	800
300	-	-	-	-	-	-	-	-	-	1000

The condition of which bond shall be, that such certificate of registry shall not be sold, lent, or otherwise disposed of, but shall be solely made use of for the ship or vessel for which it is granted; and that in case such ship or vessel shall be lost, or taken by the enemy, burnt or broken up, or shall have forfeited the privilege of a British ship, or have been condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the crown, or shall under any circumstances have been registered *de novo*, or if any foreigner shall acquire a title to any share in her, that such certificate of registry shall be delivered up to some one of the persons authorized to make registry as aforesaid. § 19.

When master is changed, the new master is to give similar bond, and his name to be indorsed on certificate of registry. § 20.

The certificate of registry to be given up, as directed by the bond. § 21.

The name of the vessel which has been registered is never afterwards to be changed; and the names of vessels to be painted on the stern. § 22.

The builder's certificate of particulars of ship is to be produced to the person authorized to grant certificates, to be verified on oath. § 23.

When the certificate of registry is lost or mislaid, the commissioners of the customs may permit registry *de novo*; or grant a licence for the present use of such ship. § 24.

Persons wilfully detaining the certificate of the ship's registry are to forfeit the sum of 100*l.* and in default of payment are to be committed to the common gaol for any term not less than three months nor more than twelve, and the vessel is to be registered *de novo*; or if the person detaining the certificate have absconded, the ship is to be registered *de novo*, as in the case of lost certificate. § 25.

And if any ship or vessel, after she shall have been registered pursuant to the directions of this act, shall in any manner whatever be altered so as not to correspond with all the particulars contained in the certificate of her registry, in such case such ship or vessel shall be registered *de novo*, in manner hereinbefore required, so soon as she returns to the port to which she belongs, or to any other port which shall be in the same part of the United Kingdom, or in the same colony, plantation, island, or territory, as the said port shall be in, on failure whereof such ship or vessel shall to all intents and purposes be considered and deemed and taken to be a ship or vessel not duly registered. § 26.

Vessels condemned as prize, or for breach of the laws against the slave trade, must, upon registry thereof, have a certificate of condemnation produced. § 27.

Prize vessels are not to be registered at Guernsey, Jersey, or the Isle of Man. § 28.

Persons selling or transferring their interest in any ship or vessel must transfer the same by bill of sale, or other instrument in writing, in which the certificate of registry must be recited. § 29.

The property in ships, where there is more than one owner, is to be divided into sixty-four parts or shares; and the oath upon the first registry is to state the number of shares held by each owner. § 30.

Only thirty-two persons to be owners at one time. But this is not to affect the equitable title of minors, heirs, legatees, creditors, or others; or if any number of persons have associated themselves as a joint stock company, for the purpose of owning any ship or vessel, or any number of ships or vessels, as the joint property of such company, and such company have duly elected or appointed any number not less than three of the members of the same to be trustees of the property in such ship or ships, it shall be lawful for such trustees, or any three of them, to take the oath required by this act before registry be made, except that instead of stating therein the names and descriptions of the other owners, they shall state the name and description of the company to which such ship or vessel shall belong: provided also, that if it shall become necessary to register any ship or vessel belonging to any corporate body in the United Kingdom, the oath required by this act to be taken before registry be made, shall be taken by the secretary or other proper officer of such corporate body, who shall in such oath declare the name and description of such corporate body, instead of the names and descriptions of the owners of such ship or vessel. § 31.

Whenever any ship or vessel, which shall have been registered before the 31st day of December, 1823, shall be registered *de novo*, the number of such shares held by each owner shall be registered as far as the same be practicable; but if at the time of such registry *de novo* such owner or owners shall make oath, that he and they and each of them are unable to produce the bill or bills of sale, or to give any certain account or proof of the share or shares of the other previous owners, or some or any one of them, it shall be lawful for the collector or comptroller to register such ship or vessel, without requiring the share or shares of such owner or owners to be declared and specified. § 32.

Within two years after the 31st of December, 1823, all shares must be registered, unless the commissioners of the customs give further time. § 33.

No bill of sale or other instrument in writing is valid to pass the property in any ship or vessel until produced to the officers of the customs, and entered in the book of registry. § 35.

When a bill of sale has been entered as aforesaid for the transfer of any shares, thirty days are to be allowed for indorsing the certificate of registry, before any other bill of sale for the same shall be entered. § 37.



Bills of sale may be produced, after entry at other ports than those to which vessels belong; and if upon registry *de novo* of any vessel, any bill of sale shall not have been recorded, the same shall then be produced, and bills of sale, previous to registry, may be afterwards recorded. § 38, 39.

Upon change of property in any ship or vessel, registry *de novo* may be granted, if desired. § 40.

Copies of oaths, and extracts from books of registry, are admitted in evidence. § 41.

Vessels, or the shares of owners, sold in the absence of owners, without formal powers: the commissioners of customs may permit the record of such sales to be registered, and in other cases, where bills of sale cannot be produced, the same power is granted, security being given to produce legal powers, or to abide future claims. § 42.

The transfer of any share or shares of vessels, by way of mortgage, the mortgagee thereof is not to be deemed an owner, and in the transfer of ships for security of debts being duly registered, the rights of the mortgagee is not to be affected by any act of bankruptcy of the mortgagor. § 43, 44.

#### INNKEEPERS ALLOWANCES FOR QUARTERING

SOLDIERS. 5 Geo. IV. c. 31.

Every non-commissioned officer and private soldier, who shall be furnished with diet and small beer by the innholders or other persons on whom such non-commissioned officers or private soldiers shall be quartered and billeted, shall pay and allow for the same the sum of 1s. *per diem*; and that for such allowance of 1s. the innholder or other person shall furnish one meal; *videlicet*, a hot dinner, if required, in each day to each non-commissioned officer, trumpeter, drummer, and private soldier, quartered and billeted on him, to consist of such quantities of diet and small beer as have been or shall be specified and fixed in and by any regulations made or to be made from time to time by his majesty in that behalf, but not to exceed one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables previous to being cooked, and two pints of small beer, and vinegar, salt, and pepper. § 1.

And it is further enacted, that in case any innholders or other persons on whom any non-commissioned officers or private men shall be quartered, shall, by virtue of the option in the act of the 5 Geo. IV. c. 13. furnish such non-commissioned officers or soldiers with the articles therein mentioned, in lieu of furnishing diet and small beer at the rates prescribed by this act, such innholders or other persons on whom such non-commissioned officers or soldiers are quartered, and by whom the said articles shall have been so supplied, shall receive in consideration thereof

one halfpenny *per diem* for each non-commissioned officer and soldier. § 2.

For horses quartered ten-pence per day is to be paid for hay and straw. § 3.

And all non-commissioned officers and soldiers shall be entitled to receive their diet and small beer from the innholders or other persons on whom they may be billeted, at the rates hereinbefore prescribed, while on the march, as also for the day of their arrival at the place of their final destination, and on the two subsequent days, unless either of the two subsequent days shall be a market-day in and for the town or place where such officers or soldiers shall be billeted, or within the distance of two miles thereof; in which case it shall be lawful for the innholder or other person as aforesaid to discontinue on and from such market-day the supply of diet and small beer, and to furnish in lieu thereof the articles in the said act of the 5 Geo. IV. c. 13. and at the rates hereinbefore prescribed. And if any victualler or other person liable to have soldiers billeted or quartered on him or her shall pay any sum or sums of money to any non-commissioned officer or soldier on the march, in lieu of furnishing in kind the diet and small beer to which such non-commissioned officer or soldier is entitled, every such victualler or other person may be proceeded against and fined in like manner as if he or she had refused to furnish or allow, according to the directions of the said act, the several things respectively directed to be furnished to non-commissioned officers or soldiers so quartered or billeted on him or her as aforesaid. § 4, 5.

If any regiment, troop, company, or detachment, when on the march, shall be halted, either for a limited or indefinite time, at any intermediate place, the non-commissioned officers and soldiers belonging thereto shall be entitled to receive their diet and small beer from the persons on whom they shall be billeted at such intermediate place, for such time only for which they would be entitled to receive the same after arriving at the place of their final destination according to this act. § 6.

And if such halting be only for a day after arrival, and that be a market-day, their diet and small beer shall not be discontinued. § 7.

And it is further enacted, that all non-commissioned officers and private men employed in recruiting, and the recruits by them raised, shall, while on the march, and for two days after the day of their arrival at any recruiting station, be entitled to the same benefits as are hereinbefore provided in regard to troops upon the march; but no recruit enlisted after the two days subsequent to the arrival of the party at their recruiting station shall be entitled to be supplied with diet and small beer at the rates hereinbefore prescribed, except at the option of the person on whom he shall be quartered; provided also nevertheless, that in case any such recruiting party, with the recruits by them raised, shall remove from their station, and after a time shall return to the same place,



they and the recruits by them raised, so returning, shall not be again entitled to the supply of diet and small beer for such two days as aforesaid, unless the period between the time of their removal from such place, and their return thereto, shall have exceeded twenty-eight days. § 8.

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MARRIAGES. 5 Geo. IV. c. 32.

Whereas by an act of the fourth year of the reign of his present majesty, (4 Geo. IV. c. 76.) intituled, "*An act for amending the laws respecting the solemnization of marriages in England,*" it is provided, that if the church of any parish, or chapel of any chapelry wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid, but it is not provided that marriages may be solemnized in such places so licensed: and whereas it is further provided, that where no such place shall be so licensed, then during such period as aforesaid the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed, but it is not provided that marriages may be solemnized by licence in such adjoining church or chapel as aforesaid: and whereas it is provided that all marriages theretofore, but it is not provided that marriages thereafter solemnized in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account: and whereas it is provided, that the ministers who have so solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever, but it is not provided that the minister who shall thereafter solemnize such marriages shall not be liable to such censure or other proceeding or penalty; and whereas it is expedient that marriages heretofore and hereafter solemnized in such place so licensed as aforesaid, during the repair or rebuilding of any church or chapel, or if no such place shall be so licensed, then in a church or chapel of some adjoining parish or chapelry whether by banns lawfully proclaimed, or by licence lawfully granted, should not have their validity questioned on account of their being so solemnized: and whereas it is expedient that the ministers who shall have so solemnized the same should not be liable to any ecclesiastical censure, or to any other proceeding whatsoever; it is therefore enacted, That from and after the passing of this act, all marriages which have been heretofore solemnized, or which shall be hereafter so-

solemnized, in any place within the limits of such parish or chapelry so licensed as aforesaid for the performance of divine service during the repair or rebuilding of the church of any parish, or chapel of any chapelry wherein marriages have been usually solemnized, or if no such place shall be so licensed then in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, whether by banns lawfully published in such church or chapel, or by licence lawfully granted, shall not have their validity questioned on account of their having been so solemnized; nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding whatsoever. § 1.

All licences granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences for the solemnization of marriages in the church of any parish, or chapel of any chapelry wherein marriages have been usually solemnized, shall be deemed and taken to be licences for the solemnization of marriages in any place within the limits of such parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of any such church or chapel, or if no such place shall be so licensed, then in the church or chapel of any adjoining parish or chapelry wherein marriages have been usually solemnized. § 2.

All banns of marriage proclaimed, and all marriages solemnized according to the provisions of this act in any place licensed as aforesaid, within the limits of any parish or chapelry, during the repair or rebuilding of the church or chapel of such parish or chapelry, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and shall be so registered accordingly. § 3.

#### COMPOSITION FOR ASSESSED TAXES. 5 Geo. IV. c. 24.

Whereas by an act passed in the last session of parliament, (4 Geo. IV. c. 45.) the persons therein described, who had not entered into composition within the times limited by former acts were authorised, by giving notice on or before the 1st September, 1823, to compound on their respective assessments for the year commencing 5th April, 1823, for the then remainder of the periods in the said acts named: and whereas it is expedient further to extend the provisions of the said acts, for enabling persons now to enter into composition for the remainder of the said periods which were unexpired on the 5th April, 1824, in the manner herein provided; it is therefore enacted that any person or persons who shall be duly assessed to the said rates and duties for the year commencing 5th April, 1824, and who shall give the notice of their intention to compound within the time and in the manner hereinafter provided, may compound for the rates and duties assessed on their dwelling-house for the term of four years



and for their other assessed taxes allowed to be compounded for for the term of three years respectively, to commence from the 5th April, 1824, together with an additional annual duty of 1s. for every 20s. of the respective amounts so assessed, and so after that rate for any greater or lesser sum than 20s. § 1.

Persons intending to compound under this act, are to give the notice required by the former acts on or before the 2d August, 1824. § 2.

The commissioners and other officers acting under the former composition acts, are to act in like manner in the execution of this act: § 3.

And whereas by the 57 Geo. III. c. 25. provision is made for granting exemptions to persons in trade from the duties on houses, windows, and lights, and on inhabited houses, in respect of houses, tenements or buildings, or parts of tenements or buildings, used solely by such persons for the purposes of trade, such persons respectively residing in a separate and distinct dwelling-house, or part of a dwelling-house, charged to the said duties, as in the said act described; and whereas it is expedient to extend the said exemptions to the cases herein mentioned; it is further enacted, that upon all assessments to be made for any year commencing from the 5th April, 1824, the provisions in the said act contained, for granting exemptions from the said duties to persons in trade, in respect of houses, tenements, or buildings in the said act described, shall be extended and applied, on due proof, to all and every person, or any number of persons in partnership together, for and in respect of any house, tenement, or building, or part of a tenement or building, in the said act described, which shall be used by such person or persons as offices or counting-houses for the purpose of exercising or carrying on any profession, vocation, business, or calling, by which such person or persons shall seek a livelihood or profit, no person inhabiting, dwelling, or abiding therein, except in the day-time only, for the purpose of such profession, vocation, business, or calling, such person or each such persons in partnership respectively residing in a distinct and separate dwelling-house, or part of the dwelling-house charged to the said duties; provided nevertheless, that the exemption herein authorized shall not extend to any chamber or apartment in any of the inns of court or of chancery, or to any college or hall in either of the universities of Oxford or Cambridge. § 4.

And upon all assessments to be made for any year commencing from the 5th April, 1824, any person occupying a farm of less value than 100*l.* per annum, and making a livelihood solely thereby, as owner or tenant, in the manner described in the said acts, and as applied to exemptions from the duties on horses, mares, or geldings kept by such occupiers, and rode on the occasions therein mentioned, shall be exempt from the duty by the said acts granted in respect of any dog or dogs, not being a greyhound, hound, pointer, setting dog, spaniel, lurcher, or terrier, which shall have

been or shall be *bona fide* and wholly kept and used by such occupier, or by any person employed by him or her as a shepherd, on his or her said farm in the care of sheep. § 5.

And whereas doubts have arisen, whether the respective duties chargeable by the said acts on porters, and on overseers or managers, extend to the employment of male persons on certain occasions; it is enacted, that for and in respect of any assessment to be made for any year commencing from the 5th April, 1824, any male person hired by the employer or employers in the said acts described, by the year, or by the week, or otherwise, shall not be deemed and taken to be a porter chargeable with the said duties, for or by reason of his employment in the loading, unloading, stowage, or removal of goods, wares, or merchandize, from, to, or upon any horse, cart, waggon, or other carriage, in the receipt or delivery of such goods, wares, or merchandize at the shop, warehouse, or place of deposit, unless such person shall also be employed in the drawing or taking of samples of goods, wares, or merchandize exhibited for the purposes of sale at such shop or warehouse, or elsewhere; nor shall any person wholly employed in any mine, adventure, or concern, under the superintendence and authority of one or more manager or managers, or one or more clerk or clerks, in such mine, adventure, or concern, (where the person or persons liable to the said duties by the said acts shall be assessed for the duty for one overseer or manager at the least, and also for one clerk at the least,) be deemed and taken to be an overseer or manager, or a clerk under an overseer or manager chargeable with duty, by reason of the employment of any such person under such manager or clerk in the overlooking and checking of labourers in the performance of the work and labour allotted to them in any such mine, adventure, or concern, and in accounting for the same to any such manager or clerk. § 6.

And whereas by the said acts it is provided, that if any person shall do any act for any of the purposes therein mentioned, without having obtained a certificate in order to an assessment for the duty thereby granted and payable, in respect of taking or killing game, or doing other acts therein mentioned, every such person shall forfeit and pay the penalty of 20*l.*; and every such offender shall also be liable to the payment of the full duty to his majesty, to be charged by way of increased charge by the inspector or surveyor in manner therein directed; and whereas doubts have arisen whether the inspector or surveyor in the said cases is authorized to charge for the game duty persons liable who have omitted to pay the said duty and obtain certificates thereof, without a previous proceeding against such offender, and a previous conviction thereon in the said penalty, or for some part thereof; and it is expedient to remove such doubts; it is therefore enacted, that it shall be lawful for any inspector or surveyor, without any previous information and conviction of the offender in the said penalty, or any part thereof, to charge, according to the provisions of the said acts, any person so chargeable with the



said duty payable by persons in respect of their taking or killing game, or doing acts in the said acts mentioned, and who shall have omitted to pay the said duty and obtain the certificate as by the said acts directed: provided, every such charge be made within the period limited by the said acts, and in the single duty only; and which charges shall be allowed by the respective commissioners in the execution of the said acts, and shall be subject to appeal according to the provisions and directions thereof, in like manner as any charges are authorized to be made by any inspector or surveyor, and appeals therefrom heard and determined under the said acts. § 7.

The provisions of former composition acts, except as hereby varied, are applied to this act in entering into compositions, and in granting relief under existing compositions. § 8.

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BEER LICENCES. 5 Geo. IV. c. 54.

By this act, from and after the 10th October, 1824, all the duties on excise licences taken out by common brewers, and by sellers of beer, ale, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises, and by sellers or retailers of beer under an act passed in the fourth year of his present majesty, for encouraging the consumption of beer, and amending the laws for securing the duties thereon; and all and singular the respective duties on excise licences taken out by retailers of distilled spirituous liquors or strong waters in Great Britain, and by retailers of foreign wine in Great Britain who shall have taken out a licence for retailing beer, but shall not have an excise licence for retailing distilled spirituous liquors, and by retailers of foreign wine in Great Britain who shall have an excise licence for retailing distilled spirituous liquors, shall cease and determine; save and except in all cases relating to the recovering, allowing, or paying any arrears thereof respectively, or to any fine, penalty, or forfeiture, fines, penalties, or forfeitures relating thereto respectively. § 1.

And in lieu of the duties by this act repealed there shall be raised, levied, collected, and paid the several duties of excise hereinafter mentioned; *viz.* From and after the 10th October, 1824, every brewer of beer in Great Britain for sale shall annually take out an excise licence for that purpose, and shall for every such licence, if the quantity of beer brewed by such brewer within the year ending the 10th October previous to taking out such licence shall not exceed twenty barrels, pay the sum of 10s. if the same shall exceed twenty barrels, and shall not exceed fifty barrels, 1*l.*; if the same shall exceed fifty barrels, and shall not exceed one hundred barrels, 1*l.* 10s.; if the same shall exceed one hundred barrels, and shall not exceed one thousand barrels, 2*l.*; if the same shall exceed one thousand barrels, and shall not exceed two thousand barrels, 3*l.*; if the same shall exceed two

thousand barrels, and shall not exceed five thousand barrels, 7*l.* 10*s.*; if the same shall exceed five thousand barrels, and shall not exceed seven thousand five hundred barrels, 11*l.* 5*s.*; if the same shall exceed seven thousand five hundred barrels, and shall not exceed ten thousand barrels, 15*l.*; if the same shall exceed ten thousand barrels, and shall not exceed twenty thousand barrels, 30*l.*; if the same shall exceed twenty thousand barrels, and shall not exceed thirty thousand barrels, 45*l.*; if the same shall exceed thirty thousand barrels, and shall not exceed forty thousand barrels, 60*l.*; or, if the same shall exceed forty thousand barrels, 75*l.*; That every person who shall, from and after the 10th October, 1824, first become a brewer of beer in Great Britain for sale, on taking out such licence as aforesaid for that purpose shall pay the sum of 10*s.* and within ten days after the 10th October, 1824, after taking out such licence, pay such further additional sum as, with the said 10*s.* shall amount to the duty hereinbefore mentioned, according to the number of barrels of beer brewed within the preceding year: That every brewer of beer in Great Britain for sale, who shall retail such beer from his, her, or their brewery, to be consumed elsewhere than in his, her, or their house or premises, shall, from and after the 10th October, 1824, annually take out an excise licence for that purpose, and shall for every such licence pay the sum of 5*l.* 5*s.*; That every person in Great Britain who shall be duly authorized by justices of the peace or magistrates to keep a common inn, alehouse, or victualling house, and who shall sell beer, cyder, or perry by retail, to be drunk or consumed in his, her, or their house or premises, shall, from and after the said 10th October, 1824, annually take out an excise licence to sell beer, cyder, or perry as aforesaid, and shall for every such licence, if the dwelling-house in which such person shall reside or retail such beer, cyder, or perry, at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated, under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 20*l.* per annum or upwards, pay the sum of 1*l.* 1*s.*; and if rated as aforesaid at 20*l.* per annum or upwards, 3*l.* 3*s.*; That every person in Great Britain who shall sell strong beer only brewed by any other brewer, in casks containing not less than five gallons, or in not less than two dozen reputed quart bottles, at one time, to be drunk or consumed elsewhere than in his, her, or their house or premises, shall, from and after the 10th October, 1824, annually take out an excise licence for that purpose, and shall for every such licence pay the sum of 3*l.* 3*s.*; That every retailer of distilled spirituous liquors or strong waters in Great Britain (not being a retailer of plain aqua vitæ only, made or distilled from British materials in that part of Great Britain called Scotland) shall, from and after the 10th October, 1824, annually take out an excise licence for that purpose, and shall for every such licence, if the dwelling house in which such retailer shall reside or retail such distilled spirituous liquors



or strong waters, at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 20*l.* *per annum* or upwards, pay the sum of 4*l.* 14*s.*; if rated as aforesaid at 20*l.* *per annum* or upwards, and under 25*l.*, 6*l.* 6*s.*; if at 25*l.* *per annum* or upwards, and under 30*l.*, 7*l.* 7*s.*; if at 30*l.* *per annum* or upwards, and under 40*l.*, 8*l.* 8*s.*; if at 40*l.* *per annum* or upwards, and under 50*l.*, 9*l.* 9*s.*; and if at 50*l.* *per annum* or upwards, 10*l.* 10*s.*: And that every person who, within the limits of any royal burgh, burgh of barony or regality, in any part of Scotland, or in any place in any other part of Scotland other than within the highlands of Scotland limited and described in the acts in that case made and provided, shall retail any spirits made or distilled from malt, corn, grain, barley, beer, bigg, or other British materials, and commonly called or known by the name of aqua vitæ, in that part of the United Kingdom, shall, from and after the 10th October, 1824, annually take out an excise licence for that purpose, and shall, for every such licence to retail plain aqua vitæ only, pay the sum of 4*l.*; And that every person who shall retail such spirits within the several counties and districts of the highlands of Scotland (the royal burghs, burghs of barony or regality therein excepted) shall for every such licence pay as aforesaid the sum of 2*l.*; And that every retailer of foreign wine in Great Britain who shall have taken out a licence for retailing beer, ale, and other exciseable liquors, but shall not have an excise licence for retailing distilled spirituous liquors or strong waters, shall, from and after the 10th October, 1824, annually take out an excise licence for that purpose, and shall for every such licence to retail foreign wine pay the sum of 4*l.* 4*s.*; And that every retailer of foreign wine in Great Britain, who shall have an excise licence for retailing distilled spirituous liquors or strong waters, shall for every such licence to retail foreign wine pay the sum of 2*l.* 4*s.* § 2.

The number of barrels of table beer brewed by any brewer, and charged with duty as table beer, shall not be reckoned or included in the account of the number of barrels of beer brewed by such brewer for the purpose of increasing the rate of licence duty, to be charged upon and paid for by such brewer, over and above the rate or sum of 2*l.* § 3.

By sections 4 & 5, the duties are to be under the management of the commissioners of excise, and are to be levied as former licence duties of excise, except where altered by this act; and the monies arising from the said duties are to be carried to the consolidated fund.

It shall and may be lawful for any brewer or brewers of strong beer only in Great Britain for sale, who shall have taken out and paid for his, her, or their licence to brew at and after the rate of 2*l.* at the least, to retail such beer from the premises where such beer is or has been brewed, and for any person not being a brewer

of beer, either for sale or private use, to sell strong beer only brewed by any other brewer, in casks containing not less than five gallons, or in not less than two dozen reputed quart bottles at one time, upon such brewer or other person respectively taking out under the provisions of this act such respective excise licence for that purpose as before mentioned, which licence shall be granted in manner hereinafter mentioned; (that is to say)—If any such licence shall be taken out within the limits of the chief office of excise in London, the same shall be granted under the hands and seals of two or more of the commissioners of excise for the time being, or of such person or persons as they the said commissioners of excise, or any four of them for the time being, shall from time to time direct or employ for that purpose; and if any such licence shall be taken out in any part of England not within the said limits, the same shall be granted under the respective hands and seals of the several collectors and supervisors of excise within their respective collection and districts; and in case any such licence shall be taken out within the limits of the city of Edinburgh, the same shall be granted under the hands and seals of two or more of the commissioners and assistant commissioners of excise in Scotland for the time being, or of such person or persons as they or any two of them for the time being shall from time to time direct or employ for that purpose; or if any such licence shall be taken out in Scotland out of the said limits of the city of Edinburgh, then the same shall be granted under the respective hands and seals of the several collectors and supervisors of excise in Scotland within their respective collections and districts; and every such licence shall expire on the 10th October next after the day on which such licence shall be dated; provided, that no such licence shall authorize such brewer or brewers, or other person or persons, taking out any such licence respectively as aforesaid, to sell any table beer, or any beer to be drank or consumed upon the premises where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person or persons taking out such licence, or selling such beer, or in which he, she, or they shall have any concern, or to sell, deal in, or retail any other beer whatsoever, or in any other manner whatsoever than respectively as aforesaid, or shall entitle any such brewer or brewers, or other person or persons, to any licence to sell or retail cyder, wine, or spirits; provided also, that within the limits of the universities of Cambridge and Oxford, all persons applying for such licences shall apply to the persons heretofore granting common ale licences, who shall or may grant the same, in the same manner and according to the same rules and usages by which they have been accustomed to grant the said last-mentioned licences. § 6.

Where the entered premises for brewing of any brewer shall be situated out of a city or market town, and such brewer shall by reason thereof not retail beer, or be licensed as aforesaid to retail



beer from such brewery, or make entry of any part of such premises for that purpose, it shall and may be lawful for any such brewer or brewers to make entry of some one place, room, store-house, cellar, shop, house, or outhouse, for the retail of beer in any one adjoining city or market town, and to take out a licence for and retail therefrom the strong beer brewed by him, her, or them at such brewery as aforesaid, to be drank or consumed elsewhere, subject nevertheless to the several provisions and penalties herein contained and imposed, relating to brewers retailing beer from the premises where brewed; provided always, that no retail brewer, not being duly licensed to sell beer as a keeper of a common inn, ale-house, or victualling-house, shall deal in or sell any table beer, or any beer except the strong beer which he or they shall brew, and be charged with the duty thereon, or shall at any one time use, employ, or consume any less quantity than sixteen bushels of malt at any one brewing, upon pain of forfeiting for each and every such offence the sum of 100*l.* § 7.

No brewer or brewers shall retail any beer from the premises where such beer is or has been brewed, nor shall any other person or persons sell beer brewed by any other brewery, in casks containing not less than five gallons, or in not less than two dozen reputed quart bottles at one time, after the expiration of such his, her, or their respective excise licence; and every such brewer and brewers, or other person and persons, shall take out a fresh licence for the purpose respectively hereinbefore mentioned, in the manner hereinbefore directed, before the expiration of such his, her, or their former licence, and so in like manner renew every such licence from year to year; and if any brewer or brewers (not being duly licensed to sell beer as the keeper of a common inn, ale-house, or victualling-house) shall retail or sell any beer at or from the premises where such beer is or has been brewed in any less quantity than a whole cask containing four gallons and a half at one time, without having first taken out and paid for a licence to brew under the provisions of this act, at and after the rate of 2*l.* at the least; or if any brewer or brewers so licensed to retail beer, shall brew, sell, or have in his, her, or their possession any table beer; or if any person or persons so licensed as aforesaid to sell beer brewed by any other brewer, in casks containing not less than five gallons, or in not less than two dozen reputed quart bottles at one time, shall brew any beer, or sell or have in his or her possession any table beer, or shall sell any beer in a less quantity at one time than as aforesaid; or if any brewer or brewers not being duly licensed to sell beer as the keeper of a common inn, ale-house, or victualling-house, shall retail any beer at or from the premises where such beer is or has been brewed, or any such other person or persons shall sell any beer in casks or bottles as aforesaid, without first taking out such respective excise licence as aforesaid, authorizing him, her, or them so to do, or without renewing the same as is herein in that behalf directed, or shall sell any beer to be drank or consumed upon the premises

where sold, or in any shop, house, outhouse, yard, garden, orchard, or other place adjoining the same, or belonging to or occupied by the person or persons taking out such licence, or in which he, she, or they shall have any interest or concern, or shall sell, deal in, or retail any other beer whatsoever, or in any other manner than is authorized by such respective licence; every such brewer and brewers, person and persons so offending, shall for every such offence forfeit the sum of 100*l.*: provided always, that all persons trading in partnership, and in one house or shop only, shall not be obliged to take out more than one licence in any one year, for retailing any beer from the premises where brewed as aforesaid, or for selling any beer brewed by any other brewer, in casks containing not less than five gallons, or in not less than two dozen reputed quart bottles at one time; and that no one licence which shall be granted by virtue of this act shall authorize or empower any person or persons to retail or sell any beer as aforesaid, in any other place than in the place, room, storehouse, cellar, shop, house, or outhouse, whereof entry in writing shall be made at the office of excise in the name or names of such brewer or brewers, or other person or persons for that purpose respectively as aforesaid, at the time of granting such licence, and in respect whereof such licence shall be granted. § 8.

No brewer of beer in Great Britain for sale shall be entitled to renew his or her licence to retail beer, unless he or she shall have brewed and been charged with duty upon or for one hundred barrels of strong beer at the least in the year preceding the termination of such former licence, or so in proportion for such part of such preceding year for which such former licence shall have been taken out; but every such brewer who shall first take out and pay for such retail licence as aforesaid shall be at liberty to retail beer, under and according to the provisions of this act, from the time of taking out such licence, notwithstanding such brewer shall then newly begin and set up the trade of a brewer, or shall not in any previous year have brewed or been charged with duty upon or for so much beer as would make the licence duty to which such brewer would be liable amount to 2*l.* § 9.

No licensed brewer and brewers who shall have disclaimed the allowance made to common brewers for and in respect of the duties on beer, and who at any time heretofore have sold, or before the 5th July, 1824, may sell by retail any beer brewed by him, her, or them, at or from the premises where brewed, to be drank and consumed elsewhere, shall be liable to any penalty or forfeiture by reason of retailing such beer without having an express licence to retail beer. § 10.

No licensed brewer of beer for sale, who shall also be duly licensed to retail such beer under this act, shall sell, deliver, or send out, at or from his, her, or their brewery, or the premises belonging thereto or entered as aforesaid, or to any of his, her, or their customers, any beer in any quantity less than a whole barrel (except between the hours of six of the clock in the morning and



nine of the clock in the evening) or shall sell, deliver, or send out any beer during the usual hours of divine service on Sundays, upon pain of forfeiting for each and every such offence the sum of 20*l.* § 11.

By § 12. the powers of former acts of parliament, relating to licences to be taken out by brewers and retailers of beer, spirits, and wine, (unless hereby altered) are to extend to this act.

Every licence and licences now, or which shall hereafter be granted or taken out, the duty and duties whereon are hereby repealed, and also every licence by this act imposed and directed to be taken out as aforesaid, shall expire on the 10th October in each year; and every common brewer or brewers, who shall take out or renew his, her, or their licence for brewing beer in Great Britain on or before the said 10th October, and expiring on that day, shall pay duty for the same for such time or part of the year only as shall be between the day when such licence was or ought to have been renewed or taken out for that purpose and the said 10th October, and shall then renew such licence under the provisions of this act, to expire on the 10th October, 1825.

And whereas licences to keep common inns, ale-houses, or victualling-houses, are in some parts of Great Britain granted by the justices and magistrates at other parts of the year than in the month of September in each year, and excise licences to retail beer, spirits, and foreign wine respectively, in such common inns, ale-houses, or victualling-houses, have been granted, and are now in force; it is therefore enacted, that nothing in this act shall extend to alter or affect any licence duly granted and now in force, to retail or sell beer, spirits, or wine, in any common inn, ale-house, or victualling-house, before the expiration of the current year for which each such licence respectively has been granted; but that in every such case all such licences to retail spirits or wine in any such common inn, ale-house, or victualling-house, shall, on their previous expiration, be renewed for such part only of the current year for which such common inn, ale-house, or victualling-house shall be so authorized to be kept and continued; and that the commissioners of excise, and other persons authorized or appointed by them, and the several collectors of excise, are hereby authorized to receive from the several persons liable to pay the same, a proportionate part of the duties payable on every such licence, and to grant such licence for such fractional part of the year between the time when any such licence shall expire, and the remainder of the year for which such common inn, ale-house, or victualling-house shall be so duly authorized to be kept and continued; and in every future year, every excise licence to sell beer, spirits, or wine, in any common inn, alehouse, or victualling-house duly authorized to be kept, shall be granted for the year ending on the next succeeding excise quarter-day after the expiration of the year for which such common inn, ale-house, or victualling-house shall be authorized to be kept, and shall then

respectively expire, and be renewed under the provisions of this act, to the day of renewal. § 14.

Persons disabled by conviction from keeping a common inn, &c. shall not be allowed to take out a retail brewer's licence; and if any such person shall after such conviction sell beer by retail, he or she so offending shall for every such offence forfeit and lose the sum of 50*l.* § 15.

It shall and may be lawful for any brewer or brewers, who shall, within three months before the passing of this act, have been charged with duties on strong and table beer respectively, and shall at the time of passing this act be a licensed brewer or licensed brewers, carrying on the trade and business of a brewer of strong and table beer respectively, to take out such licence to retail as aforesaid, and to retail under the regulations of this act the strong beer by them brewed and charged with duty, without incurring any penalty for brewing; or having in possession, or selling the table beer by them brewed, and which shall be charged with duty; upon condition nevertheless that every such brewer shall sell the whole of such table beer, and send the same out into consumption in casks containing at the least nine gallons in every such cask, and accompanied with a certificate, the particulars whereof shall be duly entered in the counterpart of every such certificate, in the certificate book delivered by the officer of excise to and kept by such brewer; and that if any such brewer shall not sell the whole of the table beer brewed or made by him or her, or which shall come into his or her possession, or on which such brewer shall be charged with duty as and for table beer, and at or below the price of and allowed and limited for table beer, from time to time as the same is brewed or made; or shall sell or send out any part thereof otherwise than in a whole cask, containing at the least nine gallons, or without such certificate as aforesaid, expressing the date on which each such cask is sent out, and the name and place of residence of such brewer and brewers, and of the person or persons to whom the same is sold, sent out, and delivered, together with the quantity of the beer as table beer, and the price at which the same is so sold, sent out, and delivered; or shall grant, issue, write, or enter any untrue certificate or counterpart for or in respect of any such table beer; or shall mix with or put any table beer wort or table beer into or amongst any strong beer wort or strong beer; or shall keep or have any table beer in the place entered by such brewer or brewers, under the regulations of this act, for the retail of beer, every such brewer shall for every such offence forfeit and lose the sum of 100*l.*; and upon the conviction of any such brewer of any such offence, the retail licence granted to him or her shall be void, and such brewer shall be wholly disabled from taking out, having, or holding any such retail licence for the future. § 17.

And whereas it is expedient that the duties on beer should be charged throughout Great Britain by the same measure; it is



therefore further enacted, that every thirty-six gallons of beer, taken either by gauge or measure, shall throughout Great Britain be reckoned, accounted, and returned by the officers of excise for a barrel of beer; and the several rates of duty imposed in respect of beer shall be charged thereon accordingly, and so in proportion for any less quantity; and no beer shall be sold by any brewer, dealer, or retailer, at any other rate or quantity for the barrel than the aforesaid quantity of thirty-six gallons. § 17.

And whereas by the 22 & 23 Car. II. c. 5. intituled, "*An act for an additional excise upon beer, ale, and other liquors,*" it was amongst other things enacted, that if any person or persons inhabiting in any market town, or in any city or town corporate, or parts adjoining to any city or town corporate, where there is or shall be a common brewhouse, having and lawfully using any private brewing vessels for the brewing and making of beer or ale, to be spent and consumed in his or their private families, shall lend out any of their brewing vessels to be made use of by any other person or persons, not being of his or their family, for the brewing of beer or ale for the use of any other person or persons, then such person or persons shall forfeit for every such offence the sum of 50*l.*; and whereas it is expedient to repeal so much of the said act as is hereinbefore recited; it is therefore enacted, That from and after the passing of this act, the same shall be and is hereby repealed. § 18.

By § 19, the penalty on persons obstructing officers in the execution of this act, or any other act relating to the duty on beer, is 200*l.*

Section 20 provides for the recovery and the application of penalties.

This act shall commence and take effect (except where otherwise specially provided) from and immediately after the 10th October, 1824. § 21.

But all and every the several provisions and regulations in this act contained, so far as the same relate to or affect brewers retailing beer, shall commence and take effect from the 5th July, 1824; and that it shall and may be lawful for the commissioners of excise, and the person or persons authorized or appointed by them, and the several collectors of excise, to receive from the several persons liable to pay the same, on their request, a proportionate part of the retail licence duty hereby imposed on and payable by such retail brewer on every licence for that purpose, and to grant such licence for the remainder of the year ending the 10th October, 1824, under the several provisions of this act. § 22.

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#### AMENDMENT FOR INSOLVENT DEBTORS.

5 Geo. IV. c. 61.

This act, after reciting the 1 Geo. IV. c. 119. intituled, "*An act for the relief of insolvent debtors in England, to continue in*

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force until the 1st of June, 1825," and the 3 Geo. IV. c. 123. intitled, "*An act to amend an act of the first year of his present majesty, for the relief of insolvent debtors in England;*" and that it is expedient to alter and amend the same: enacts, That so much of the said act as gives any power, authority, or jurisdiction, or enables the Court for Relief of Insolvent Debtors to give or delegate any power, authority, or jurisdiction, to any justices of the peace at their general or general quarter sessions of the peace, or at any adjournment thereof, for any county, riding, city, cinque port, ancient town or member, division, liberty, or place, shall be, from and after the 1st September, 1824, repealed; except as to the justices of the peace at their general or general quarter sessions of the peace, or at some adjournment thereof, for any county, city, liberty, or place in the principality of Wales. § 1.

And it is further enacted, that where any prisoner shall be in any county gaol, or other gaol or prison in England, except in the counties of Middlesex or Surrey, or in the city of London, or the borough of Southwark, upon any process whatsoever issuing out of his majesty's superior courts in Westminster Hall, or out of any court whatsoever in England, then in such case, upon petition being made to the said Court for Relief of Insolvent Debtors by such prisoner, in manner directed by the said recited acts or either of them, and upon such schedule being delivered into the said court as is required by the said recited act, or either of them, it shall be lawful for the said court, on the application of such prisoner, to make a rule or order to cause such prisoner to be brought to and to appear at the court house or other place in any assize or other town in the county, or county of a city or town, where such prisoner shall be imprisoned, on such day and at such time as shall be mentioned and specified in such order, not being more than four calendar months after the date of such order; and the expence of conveying such prisoner to any such assize or other town, in every case where the gaol in which such prisoner shall be confined shall not be situate within such assize or other town, not exceeding 1s. a mile, shall be paid to the keeper or gaoler, or officer who shall bring such prisoner to such assize or other town in obedience to such rule or order, out of the estate or effects of such prisoner, if the same shall be sufficient to pay such expence, and if not, then such expence shall be paid by the treasurer of the county, county of a city or town, in which such prisoner shall be imprisoned, as the same shall be directed or ordered by the commissioner before whom such prisoner shall be brought; and the said court shall cause like notice of every such petition and schedule of such prisoner, and of such rule or order of the court for bringing such prisoner to such assize or other town thereupon, as is required by the said first-mentioned act, as to the matter of petitions heard before the court. § 2.

And on such day so appointed by order of the said Court for Relief of Insolvent Debtors, it shall be lawful for any one commissioner of the said court, and he is hereby authorized and re-



quired to attend at such court house or other place in such assize or other town, and to proceed on such day, and from day to day if requisite, in hearing the matter of the petitions of any prisoner or prisoners, who shall appear at or be brought to such assize or other town, and to pronounce any such judgment, and to make all such orders, and to give all such directions, and to do all such other matters and things requisite for the discharging or remanding of any and every such prisoner, and for the assignment and application of the estate and effects of every such prisoner; and such commissioner shall have such power to discharge or remand any and every such prisoner, and in all other respects to act and do with respect to any and every such prisoner, and with respect to the petition and schedule of any and every such prisoner, as the said Court for the Relief of Insolvent Debtors could or may do under or by virtue of the said recited acts, or either of them; and all judgments, rules, orders, directions, proceedings, acts, matters, and things, for or relating to such prisoner, creditors, and assignees, done by such commissioner, shall be as good, valid, and effectual to all intents and purposes, as if they had been done by the said Court for the Relief of Insolvent Debtors; and the same shall be made a record of the proceedings in such Court for the Relief of Insolvent Debtors, and shall be transmitted to such court, signed by such commissioner, to be a record of the said court, and to be kept as such among the records thereof. § 3.

And it is further enacted, that it shall be lawful for his majesty to appoint one other commissioner, being a barrister at law of ten years standing at least, in addition to those already appointed; and that three of the said commissioners shall from time to time severally make circuits, and give their attendance respectively at the several assize or other towns at which any prisoner or prisoners shall be ordered to appear in manner aforesaid, so that the circuits shall be three times in each year, if requisite; and during the said circuits, one of the said commissioners shall be attendant and presiding in the said court established by the first-mentioned act; and the time and manner of making such circuits, and the officers necessary to attend the commissioners making the same, shall be regulated in such manner as shall be agreed on between the commissioners of the said court, with the approbation of one of his majesty's principal secretaries of state for the time being; and it shall and may be lawful for the lord high treasurer, or lords commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, for the time being, to direct that such sum or sums shall be paid as may appear fit and necessary for defraying the travelling expences of such commissioners and officers in the execution of their duties under this act or the said recited acts, or either of them. § 4.

The clerk of the peace, or his deputy, shall attend and act as clerk to the commissioner; and the said clerk of the peace, or his deputy, shall, in consideration and recompence of and for his trouble, be entitled to receive from every prisoner, in whose case

he shall act, the sum of 5s. and no more, the same to be in lieu of all fees of every nature and kind for the performance of the duties under this act; and such fee shall be paid previous to the bringing up such prisoner before such chief or other commissioner. § 5.

And it is further enacted, that notice of the time and place or places of the attendance of such commissioner in each county, or county of a city or town, shall be given in the London Gazette, and in some public journal or newspaper published in each such county respectively, once in each of the two weeks immediately preceding the time appointed for such attendance. § 6.

When the commissioner does not attend on the day appointed, the court shall stand adjourned to the next day. § 7.

And it is enacted, that such chief or other commissioner, who shall not arrive at any such assize or other town on the day so appointed by the said court, shall, without delay, state in writing the reason or cause which prevented him from arriving, and shall send the same forthwith by the post, subscribed by himself, to one of his majesty's principal secretaries of state. § 8.

And whereas it may sometimes be highly expedient that all the said commissioners should be absent from London, in different cities, towns, and places, at the same time; it is therefore enacted, that on any particular occasion, when the said commissioners shall be of opinion that it would be expedient that all of them should be absent from London in different places at the same time, it shall be lawful for such chief and other commissioners to state such opinion, together with the grounds and reasons thereof, in writing, to one of his majesty's principal secretaries of state for the time being; and thereupon, if such secretary of state shall approve thereof, it shall be lawful for all the commissioners to be absent from London at the same time, in such places respectively as shall be so mentioned and allowed, and for that purpose to adjourn the said Court for Relief of Insolvent Debtors for such time as shall be permitted in and by such notification. § 9.

And it is further enacted, that the said court, or the said commissioner upon his circuit, shall from time to time, as occasion may require, appoint as many fit persons as may be judged sufficient, to be examiners for the purposes of the said acts and this act; and if it shall appear to be expedient and proper that the accounts of any prisoner, and the matters of his schedule, should be further investigated and examined, then it shall be lawful to adjourn the hearing of the petition of such prisoner, and, at the request of any one or more of the creditors, to order and direct that some one of the examiners so appointed shall examine into the matters of the said schedule, and certify his opinion thereon, of which all parties interested shall take notice; and that such examiner shall receive for his trouble the sum of 1*l.* and no more, for every meeting under such order, to be paid by the person or persons requiring the same. § 10.

And where an order has issued for the hearing of the matter of



the petition and schedule of any prisoner at an assize or other town, such prisoner shall cause the duplicate of such petition and schedule, and all books, papers, and writings relating thereto, in his or her possession or power, to be lodged with the clerk of the peace, or his deputy, within ten days after such order, or on such earlier day as shall be named in such order; and such prisoner shall be subject to such order as the court shall make to enforce compliance. And the said clerk of the peace, or his deputy, shall, on the reasonable request of such prisoner, or of any creditor or creditors, or his or her attorney, produce such petition and schedule, and books, papers, and writings, and permit them to inspect and examine the same, on the payment of 1s.; and such clerk of the peace, or his deputy, shall provide a copy or copies of such petition or schedule, or such part thereof as shall be so required; for which he shall be entitled to receive 4d. for every sheet containing seventy-two words, and no more, unless the same shall be the last or only sheet, in which case he shall be entitled to 4d. although it does not contain seventy-two words; and every such prisoner shall cause the said duplicate of his schedule, and his said books, writings, and papers, to be produced at his hearing. § 11.

And it is further enacted, that the said recited acts, or either of them, shall not extend to any person in actual custody, who shall not be at the time of filing his petition, and during all the proceedings thereon, in actual custody within the walls of the prison, and not within any rules or liberties thereof; nor to any prisoner who, after his commitment to any prison in any county or place where he or she had, at or lately before his or her arrest, his or her usual place of abode, other than in Middlesex, Surrey, London, or Southwark, aforesaid, shall cause himself to be removed by any writ of *habeas corpus*, or otherwise, from such respective prison to any other prison. § 12.

And where it shall appear to the satisfaction of the court that any prisoner arrested within the counties of Middlesex or Surrey, or the city of London, or borough of Southwark, had, at or lately before such arrest, his or her usual place of abode in some county or place other than the said counties of Middlesex or Surrey, or the city of London, or the borough of Southwark, and hath been arrested in the said counties of Middlesex or Surrey, or the city of London, or borough of Southwark; or where any prisoner, having been arrested in any county or place other than Middlesex, Surrey, or the city of London, or borough of Southwark, shall be rendered in discharge of his bail; it shall and may be lawful for the said court, upon the request and at the expence of any of his or her creditor or creditors, to order, in any of such cases, such prisoner to be taken to the gaol of the county or place where such prisoner had, at or lately before such arrest or render, his or her usual place of abode, and to be brought for hearing and examination to the assize or other town of the county, or county of the city or town, to the gaol whereof he shall have been so removed; and such expence incurred by such creditor or creditors shall be repaid

to him or them by the assignee or assignees of such prisoner, out of the estate, effects, and property of such prisoner, before any dividend shall be made thereof. § 13.

And it is further enacted, that the filing of such petition of every person in actual custody, who shall be subject to the several statutes concerning bankrupts, or any of them, and who shall apply by petition to the said court for his or her discharge from confinement according to the provisions of the said recited acts or this act, or any or either of them, shall be accounted and adjudged an act of bankruptcy from the time of filing the said petition: provided always, that no commission of bankrupt shall issue against such person upon such act of bankruptcy, after the said court or commissioner shall have ordered such prisoner to be discharged forthwith, or at any future period, or not to be discharged until a certain period, according to the provisions of the said recited acts and this act, or either of them. § 14.

And where the said court or commissioner shall, after the filing of any prisoner's petition, and before the said court or commissioner adjudge him entitled to his discharge, appoint one or more assignee or assignees of the estate and effects of such prisoner, and where the said court or commissioner shall appoint one or more assignee or assignees of a prisoner of unsound mind, every such assignee or assignees, as well as such assignee or assignees as have hitherto been in such cases appointed by the said court, shall, if the said court or commissioner shall so direct, cause fourteen days notice to be given in the London Gazette, and such one or more newspaper as the said court or commissioner shall order, of the day on which, and place where, a dividend shall be made amongst the creditors of such prisoner, who shall prove their debts before such assignee or assignees, unless such prisoner, or his or her assignee or assignees, or any other creditor of such prisoner, shall object to any such debt, in which case the same shall be examined into by the said court or commissioner, in the manner in the said first-recited act mentioned; and every such prisoner shall be thenceforth discharged from the debts of all such creditors who shall accept any such dividend, in the same manner and to the same extent as if the said court or commissioner had declared such prisoner to be entitled to the benefit of the act, and to be discharged out of custody forthwith, and no further or otherwise; and it shall be lawful for the said court or commissioner to make an order accordingly, specifying the debts from which such prisoner shall be so discharged. § 15.

And whereas an act passed in the third year of the reign of his present majesty, intituled, "*An act for preventing frauds upon creditors by secret warrants of attorney to confess judgment;*" and it is expedient to extend the provisions of such act; it is therefore enacted, That the last-mentioned act shall extend to the provisional or other assignee or assignees of every prisoner who shall, after the expiration of twenty-one days next after his execution of such warrant of attorney, or his giving of such *cognovit actionem*



as therein mentioned, apply by petition to the said court for his or her discharge from confinement, according to the provisions of the said recited acts or either of them, as if the last-mentioned act had been expressly herein enacted; and such provisional or other assignee or assignees shall be entitled to recover back and receive, for the use of the creditors of such prisoner, all and every the monies levied or effects seized under or by virtue of any such judgment or execution. § 16.

And if any prisoner who shall file his petition for his discharge shall, before or after his imprisonment, being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over any estate, real or personal, security for money, bond, bill, note, money, property, goods, or effects whatsoever, to any creditor or creditors, every such conveyance, assignment, transfer, charge, delivery, or making over, shall be deemed to be fraudulent and void: provided always, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent or void, unless made within three months before the filing of the said petition, or with the view or intention of filing a petition. § 17.

The court may order such part of salary of officers of customs and excise as the commissioners thereof shall consent to, to be applied in payment of such officers' debts. § 18.

And it is further enacted, that in all cases in which a person shall take the benefit of the said acts, and shall be entitled to any lease or agreement for a lease, and his assignee or assignees shall accept the same and the benefit thereupon as part of the insolvent's estate and effects, the insolvent shall not be deemed liable to pay the rent accruing due after such acceptance of the same; and, after such acceptance, the insolvent shall not be liable to be in any manner sued in respect or by reason of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained: provided, that in all such cases as aforesaid, it shall be lawful for the lessor or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the assignee or assignees shall decline, upon his or their being required so to do, to determine whether he or they will or will not accept such lease or agreement for a lease, to apply to the said court or commissioner, praying that he or they may either so accept the same, or deliver up the lease or agreement for the lease, and the possession of the premises demised or intended to be demised; and such court or commissioner shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and such order shall be binding on all parties. § 19.

And wherever any creditor or creditors opposing a prisoner's discharge, shall prove to the satisfaction of the court, that such prisoner, with intent to conceal the state of his affairs, or to defeat the objects of the said acts or this act, has destroyed, or otherwise wilfully prevented or purposely withheld the production of any books, papers, or writings relating to such of his affairs as

are subject to investigation, or shall have kept or caused to be kept false books, or made false entries, or shall have wilfully and fraudulently altered or falsified any such books, papers, or writings, or shall in any respect have been guilty of fraud in discharging or concealing any debt due to or from the said prisoner, or shall have fraudulently made away with, charged, mortgaged, or concealed any part of his or her property, of what kind soever, either before or after his or her said imprisonment, for the purpose of diminishing the sum to be divided among the creditors, or of giving an undue preference to any of them, the court shall order the taxed costs of the said opposition to be paid to such opposing creditor out of the estate and effects of such prisoner; and in all other cases of opposition to a prisoner's discharge being substantiated or effectual, it shall be lawful for the court to make a like order, if it shall seem fit. § 20.

And it shall be lawful for the chief or any one commissioner to hear and determine out of court, upon summons to the proper parties, all matters and things relating to any prisoner or person discharged by any act for the relief of insolvent debtors, or to his estate, property, and effects, or his assignee or assignees thereof, except the hearing, re-hearing, or any examination of any such prisoner or person discharged; and the order made in any such behalf by such chief or other commissioner shall be of as full force and effect to all intents and purposes as if the same had been made by the said court, unless the same shall, upon application to the said court at the next following sitting thereof, be by the said court altered or rescinded. § 21.

And it is further enacted, that it shall be lawful for the court, or chief or other commissioner, to order such portion of the salary, pay, emoluments, or pension of any prisoner being or having been an officer or clerk, or being or having been otherwise employed or engaged in the service of his majesty in any civil office, or of the Court of Directors of the Honourable East-India Company, or any other department whatsoever, as the said court may order in writing, and as upon communication with the chief officer of the department in which such insolvent may be belonging at the time, or in which he may have served, and to which such chief officer shall consent in writing, to be applied in payment of the debts of such person, and for that purpose to be paid to his assignee or assignees. § 22.

And it is further enacted, that this act shall commence and take effect upon and after the 1st of September, 1824, and continue in force until the 1st of June, 1825, and from thence until the end of the then next session of parliament. § 23.

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SAVING BANKS. 5 Geo. IV. c. 62.

The preamble to this act recites the 57 Geo. III. c. 130. intitled, "*An act to encourage the establishment of Banks for Savings*



*in England;*" which act was amended by the 58 Geo. III. c. 48; both of which acts were amended by the 1 Geo. IV. c. 83; and also the 57 Geo. III. c. 105. intituled, "*An act to encourage the establishment of Banks for Savings in Ireland;*" and it is expedient that the said last-mentioned act should be amended in conformity with the 1 Geo. IV. c. 83. relating to saving banks in England, and that all the said acts should be further amended with relation to the saving banks in England and Ireland; it is therefore enacted, That from and after the 20th November, 1824, so much and such parts of the said recited act of the 57 Geo. III. for the establishment of banks for savings in Ireland, whereby the issuing of any debenture, by or under the authority of the commissioners for the reduction of the national debt, is authorized or required upon the payment of any money into the bank of Ireland to the account of the said commissioners by the trustees of any savings bank, shall, as to any such payments which shall be made into the bank of Ireland by the trustees of any savings bank at any time after the said 20th November, cease and determine. § 1.

And on payment of money into the bank of Ireland by the trustees of any savings banks to the account of the commissioners for the reduction of the national debt, their officer shall give a receipt for the same, carrying interest at 3*d.* per cent. per diem. § 2.

And the interest on all such sums shall be calculated half-yearly, up to the 20th November and 20th May, and carried, within thirty days from such periods, to account of the savings banks in Ireland, as an additional principal also carrying interest: provided always, that no interest shall be computed or calculated on the fractional part of 1*l.* or any sum less than 1*l.*: provided also, that it shall be lawful for the managers and trustees of any savings bank, if they shall so think fit, to direct that all interest which shall become due and payable to the depositor on any sum of money deposited in such savings bank, shall twice in each and every year be calculated and computed by the trustees of such savings bank, or such person or persons as they shall appoint, and shall be carried to the credit of the person or persons depositing the said sum or sums of money, and shall become principal, and shall from thenceforth carry interest in all respects as other principal money deposited in the said bank, or as if the said sum of interest so calculated had actually been paid to the said depositors, and by them repaid to the said trustee or trustees. § 3.

Before drawing for money, the trustees of savings banks in Ireland shall sign an appointment of an agent to receive the same, which shall be deposited with the officer of commissioners for reduction of national debt. § 4.

By § 5, the trustees of savings banks may revoke such appointments, and from time to time may grant others; and in case of the decease of every trustee except one, it shall and may be lawful for the surviving trustee together with any other trustee or trustees, being not less than three nor exceeding four in the whole; and in case of the decease of all such trustees, or in case all such

trustees shall decline or refuse to act, it shall be lawful for any other trustees of the said savings bank, not exceeding four in the whole, from time to time to make, give, and execute an appointment in manner aforesaid, re-appointing the person or persons named in such appointment, or any other person or persons in his or their room or stead, to be the agent or agents of such trustees.

The trustees of savings banks in Ireland may draw at any time on the commissioners for the whole or any part of any sum placed to their account, by drafts on the said commissioners for the reduction of the national debt, which shall be indorsed by their officer, with the interest added thereto, and paid by the cashiers of the bank. § 6.

And it is further enacted, that all sums of money which shall be due on the 20th November, 1824, for interest upon any debenture which shall be issued to the trustees of any savings bank in Ireland, under the said recited act of the 57 Geo. III. at any time before the said 20th November, 1824, and which may be outstanding on that day, shall, within thirty days be placed to the credit of the trustees of the respective savings banks on whose account respectively such debentures were originally issued; and the said interest so due shall be consolidated with the interest which shall accrue from time to time, on every such 20th May and 20th November respectively, upon all or any sum or sums then standing on the account of such respective savings bank. § 7.

It shall be lawful for the trustees of any savings bank in Ireland, on whose account any such outstanding debentures may have been issued, to draw upon the said commissioners for payment in money of the whole or of any part of the principal sum contained in any such outstanding debenture (together with the interest due thereon); and that at any time before or on the said 20th November, 1824, it shall be lawful for such trustees, in lieu of receiving the whole amount of such principal and interest, or any part thereof, in money, to accept from the officer of the said commissioners a receipt for the whole, or for any part of such principal and interest, according to the provisions of this act, dated either before or on the said 20th November, 1824, and it shall be lawful for the said officer to indorse such order of the said trustees for payment of the whole principal and interest of such debenture or debentures, or any part thereof, in money, in the manner hereinbefore directed, or to issue and deliver to the person or persons applying for the same, a receipt carrying interest at the rate of 3*d.* per centum per diem. § 8.

If, at any time between the passing of this act, and the 20th November, 1824, the trustees of any savings bank in Ireland shall require any payment to be made in part or on account of any debenture, whether an original debenture or a renewed debenture, it shall be lawful for the said trustees to require, and for the officer of the said commissioners to issue, a receipt for the whole of the principal and interest which shall remain due on any such



debenture, after deducting the payment required to be made thereon; and the sum of money specified in such receipt shall be carried to the account of the trustees of such savings bank, in like manner as is hereinbefore provided and directed with respect to receipts to be issued at any time after the said 20th November, 1824. § 9.

And in all cases where the joint stock or property of the depositors in any savings bank in Ireland may have been increased, by any change of stock, or by any increased rate of interest paid or to be paid on any debentures or receipts, beyond the rate of interest payable to the depositors, or any other means, it shall be lawful for the trustees for the time being, to make such rules, orders, and regulations for the application and disposal of any increased stock or property, to and amongst depositors therein, either by way of an increase or interest beyond the rate of interest originally stipulated to be paid to such depositors, or by way of bonus or increase of capital to the sums deposited by them respectively, or by both means, as the trustees and managers of such savings bank, or the major part of them, shall from time to time think fit and proper; and it shall be lawful for such trustees and managers, or the major part of them, from time to time, to revoke, amend, alter, or make void any such rules, orders, and regulations, and to make any other rules, orders, and regulations relating thereto, as such trustees and managers shall think fit and proper. § 10.

It shall not be lawful for the trustees of any savings banks, in England or Ireland, to apply or dispose of any increased stock or property to and amongst the depositors therein, under the authority of this act or of the 1 Geo. IV. until after the expiration of ten years from the date of the first institution or establishment of any such savings bank respectively; and no further application or disposition of such increased stock or property shall be made, until after the expiration of ten years next after the time when any previous application shall have been made; and before any such application or disposition shall take place, one half part at least of the amount of such increased stock or property shall be set apart for the purpose of meeting any deficiency which at any time may arise, and which may require to be provided for; and no such application or distribution shall at any time take place, unless notice of the intention of the making such application or division shall be given to the commissioners for the reduction of the national debt, thirty days previous to the making such application or division, stating in such notice the amount intended to be applied or distributed; and such notice shall be given in writing, signed by not less than five of the trustees or managers. § 11.

Whenever the sum to be drawn for by the trustees of any savings bank in Ireland shall amount to 2000*l.* or upwards, the draft or order for that purpose shall be signed by not less than

four trustees, and the signature of each and every of the four trustees shall be separately attested by at least one manager of such savings bank, or by some one other credible person; and any manager or other person attesting the signature of any one of the said four trustees shall not be an attesting witness to the signature of any other of such four trustees. § 12.

In case any debenture which shall have been issued under the authority of the 57 Geo. III. for the establishment of savings banks in Ireland, at any time after the passing of this act, shall have been lost, destroyed, or defaced, it shall be lawful for the said commissioners for the reduction of the national debt, on application by any three trustees on behalf of the savings bank on whose account such debenture was originally issued, and upon proof on oath or otherwise, to the satisfaction of the said commissioners, of the date, contents, and value of such debenture, and of the circumstances of the loss, destruction, or defacing thereof, to direct and order the officer of the said commissioners to issue to the person or persons making such application (upon their giving and entering into such security as shall be required and directed by the said commissioners, a receipt carrying interest as aforesaid, according to the directions contained in this act, for a sum of money equal in amount to the principal and interest due on such debenture so lost, destroyed, or defaced; and such sum of money shall be subject to all the regulations contained in this act and the said recited act, as the same is altered or amended by this act. § 13.

And in all cases where the whole estate and effects of any deceased depositor, for or in respect of which any letters of administration shall be granted pursuant to the directions of the said recited act of the 57 Geo. III. for the establishment of banks for savings in Ireland, shall be under the value of 50*l.* sterling, no stamp duty shall be chargeable upon the bond required to be given by the administrator for the due administration of the effects of such deceased depositor, nor upon any affidavit or document leading to or connected with such administration, but every such bond and affidavit shall be exempted from stamp duty, in like manner, and under the like regulations, as are provided in and by the said recited act with respect to such letters of administration, and that no receipt, nor any draft or order, nor any appointment of any agent or agents, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever, required or authorized to be given, issued, signed, made, or produced in pursuance of the said recited act or this act, shall be subject or liable to any stamp duty whatever. § 14.

And it shall be lawful for the trustees of any savings bank in Ireland to pay into the Bank of Ireland any sum of money, not being less than 50*l.* to the account of the commissioners for the reduction of the national debt, in like manner, and for the like purposes, as such trustees by the said recited act of the 57 Geo.



III. for the encouragement of such banks in Ireland, are empowered or enabled to pay any sum or sums of money, not being less than 100*l.* § 15.

All interest upon any debenture or debentures which shall have been issued in England or Ireland, at any time before the 20th of November, 1824, under any of the hereinbefore recited acts, shall cease and determine on that day; and no sum of money shall be placed to the credit of any savings bank for interest for any time subsequent to such day, upon or in respect of any such debenture which may be outstanding on that day. § 16.

And in case any one or more trustee of any savings bank in England or Ireland respectively, who shall have made, given, signed, and executed any such appointment under or by virtue of the said act of the 1 Geo. IV. in England, or under or by virtue of this act in Ireland, or in case any one or more other trustee or trustees of any such savings bank shall at any time appear in person at the office of the said commissioner in England or Ireland respectively, and require payment of any sum or sums of money which might be required by the person or persons authorized to receive the same by such appointment, or if any trustee or trustees of any savings bank shall appear in person where no such appointment shall have been made, and if such trustee or trustees so appearing shall produce a draft or order signed by any two or more trustees of such savings bank in England, or by any three or more trustees of such savings bank in Ireland, no such trustee or trustees being himself or themselves the party or parties who signed such draft or order, and if the identity of the person of the trustee or trustees so appearing shall be ascertained to the satisfaction of the said commissioners or their officer, it shall be lawful for the said officer to direct payment to be made to such trustee or trustees. § 17.

And it shall be lawful for the trustees and managers of any savings bank in England or Ireland respectively, to pay any sum of money not exceeding in the whole the sum of 20*l.* (exclusive of interest thereon) which any depositor in the funds of any such savings bank shall die possessed of or entitled to at any time after the decease of any such depositor, in case such trustees shall be satisfied that no will was made, and left by such deceased depositor, and that no letters of administration will be taken out of the goods and chattels of such depositor. § 18.

And whenever any trustees or managers of any savings bank in England or Ireland shall at any time after the decease of any depositor have paid and divided any such sum of money not exceeding 20*l.* to or amongst any person or persons who shall at the time of such payment appear to such trustees or managers to be entitled to the effects of any deceased intestate depositor, according to the Statute of Distributions, or according to the rules and regulations of any such savings bank, the payment of any such sum of money shall be valid and effectual, with respect to any demand of any other person or persons as next of kin to such

deceased intestate, or the estate of such depositor, against the funds of such savings bank, or against the treasurers, trustees, or managers thereof; but nevertheless, such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same. § 19.

And it is further enacted, that from and after the 20th of November, 1824, so much of the 57 Geo. III. c. 105. for the encouragement of banks for savings in Ireland, whereby it is provided, that the amount to be received by any such bank from any one person in any one year shall not exceed the sum of 50*l.*; and also so much of the said act which permits the trustees of any such savings bank to place any portion of the funds of such bank, not exceeding one-fifth part in the whole at any one time of the funds of such institution in the hands of any banker; and also so much of the 57 Geo. III. for the encouragement of the establishment of banks for savings in England, whereby it is provided, that the amount to be received by any such bank from any one person shall not exceed the sum of 100*l.* in the first year, and 50*l.* in every year afterwards, in the whole from each depositor; and also so much of the 58 Geo. III. whereby it is provided, that the sums paid into any such bank by any such person who shall pay or subscribe any sum by ticket or number or otherwise, shall not exceed the sum of 10*l.* in any one year, shall, from and after the 20th of November, 1824, be repealed; and from and after the said 20th of November, 1824, no sums shall be paid or subscribed into any savings bank in England or Ireland by any person or persons, by ticket or number or otherwise, without disclosing his or her name to the trustees of such savings bank. § 20.

And from and after the 20th of November, 1824, it shall not be lawful for the trustees of any savings bank in England and Ireland respectively to receive from any one depositor any sum or sums exceeding 50*l.* in the whole, during the year then next ensuing such 20th of November, or exceeding 30*l.* in the whole, exclusive of interest, in any one year afterwards ending on the 20th of November, nor to receive from any depositor any sum or sums of money whatever, which shall make the sum to which such depositor shall be entitled exceed the sum of 200*l.* in the whole, exclusive of interest. § 21.

Where it shall happen that any depositor, in the course of the year next ensuing the 20th November, 1824, shall have subscribed any sum or sums not exceeding 50*l.* in the whole, or that any depositor in the course of any year afterwards ending on the 20th of November, shall have subscribed any sum or sums not exceeding 30*l.* exclusive of interest, it shall be lawful for such depositor from time to time to withdraw such sum so subscribed, or any part thereof, out of such savings bank, and again to deposit in the same savings bank the same or any other sum or sums not exceeding the several amounts aforesaid, at any time during the course of every such year respectively, so nevertheless that such



depositor shall not, at the end of any such year, or at any one time in the course of any one such year, be possessed of or entitled in the whole to more, exclusive of interest, than the several sums by this act allowed to be received from such depositor at the end of such year. § 22.

And it shall be lawful for the trustees of any savings bank in England or Ireland to receive from any person acting as trustee on behalf of any depositor, any sum not exceeding the annual amount hereinbefore mentioned; provided, that such trustee shall make such declaration on the behalf of himself, and also on behalf of such depositor, and subject to the like conditions as by this act is required in the case of any person making any deposit on his or her own account; and all deposits made by any such trustee shall be inserted in the books of such savings bank, in the joint names of such trustee and of the person on whose account such sum shall be so deposited; and the receipt and receipts of such trustee, or the executors or administrators of any sole trustee or surviving trustee, shall be as good and effectual to all intents and purposes as the receipt and receipts of the person on whose account such sum shall be so deposited. § 23.

And from and after the passing of this act so much and such part of the said recited act of the 1 Geo. IV. for amending the acts for encouraging the establishment of banks for savings in England shall be repealed, whereby it is enacted that it shall be lawful for the trustees of any charitable institution or society in England from time to time to subscribe the whole or any part of the funds of such institution or society into the funds of any savings bank. § 24.

And from and after the passing of this act it shall not be lawful for any person or persons, who shall have made any deposit in or any subscription to, or who shall be entitled to any benefit from the funds of any savings bank in England and Ireland, to make any deposit in or to subscribe any sum into the funds of any other savings banks in England or Ireland; and that every person desirous of making any deposit in or any subscription to any savings bank, shall, at the time of making the first deposit in any savings bank next after the 20th of November, 1824, and at such other time or times as such depositor shall be required so to do by the trustees or managers of any such savings bank, sign a declaration, in such form as shall be directed or approved of by the commissioners for the reduction of the national debt, or their proper officer, that the person or persons, on whose behalf any such first deposit or subscription shall be required to be made, is not or are not entitled to any deposit or any such subsequent deposit or subscription in, or any benefit from, the funds of any savings bank in England or Ireland, other than that into which such deposit or subscription shall be made; and in case any such declaration shall not be true, or if any person shall at any time have or hold or be possessed of any deposit or funds in more than one savings bank within the United Kingdom, every such person

shall forfeit and lose all right and title to any deposit in or to any funds of any and every such savings bank; and the managers and trustees of such savings bank shall and they are hereby required in such case to close the account of such depositor, and to cause the sum or sums so forfeited to be forthwith paid into the bank of England or bank of Ireland, as the case may be, to the account of the commissioners for the reduction of the national debt, standing in the books of the governor and company of the said banks respectively under the title of "The Account of the Commissioners for applying certain sums of money annually to the Reduction of the National Debt;" and the cashier or cashiers of the said governor and company is and are hereby required to receive all such sums, and to place the same to the said account, to be applied in like manner as all other money placed to the said account; and every such declaration so made shall be filed and kept and preserved by the trustees of every such savings bank; and a printed notice of such regulation and prohibition shall be affixed in the office or place appointed for the receiving of deposits to any savings bank, in such form as the commissioners for the reduction of the national debt, or their proper officer, shall from time to time direct or require or approve. § 25.

Provided always, that at any time after the passing of this act, it shall be lawful for any depositor in any savings bank in England or Ireland to withdraw from such savings bank the whole of his or her deposits at any one time (but not in parts or shares), for the purpose of investing the same in any other savings bank; and in such case it shall be lawful for the trustees and managers of any such savings bank from which such deposit shall be intended to be withdrawn, or any two or more of them in England, or any three or more of them in Ireland, to grant to any such depositor a certificate under the hands of such two or three trustees and managers respectively, attested by the secretary or actuary of such savings bank, and such depositor shall also subscribe his or her own name to such certificate in the presence of one or more of the said trustees and managers, and such certificate shall state the whole amount of the deposit of such depositor in such savings bank, and shall be in such form as shall be directed or approved of by the commissioners for the reduction of the national debt, or their officer; and upon the production of such certificate to the trustees and managers of the savings bank into which such deposit is intended to be removed, the person applying shall, and he or she is hereby required to indorse his or her name on the back of such certificate in the presence of one or more of the trustees and managers of such savings bank, and such indorsement shall be attested by one of such trustees and managers; and if such trustee or trustees and manager or managers shall be satisfied that such certificate is authentic, and that no abuse is intended thereby, it shall be lawful for the trustees and managers to receive the sum specified in such certificate, and to place the same to the account of the person therein described in the books of such



savings bank : provided, that previous to such investment a like declaration shall be made by the person applying to make such deposit, as is required in other cases of making deposits in savings banks according to the provisions contained in this act ; and such person shall be considered in all respects as an original subscriber to such savings bank, and shall be liable to all such rules, regulations, and restrictions as any original subscriber to such bank, as to the amount to be subscribed in any subsequent year, and as to the total amount allowed to be deposited by such subscriber. § 26.

And from and after the 20th of November, 1824, the several sums of money belonging to any savings bank in England or Ireland respectively, shall be paid into and invested in the bank of England or the bank of Ireland, as the case may require, in the names of the commissioners for the reduction of the national debt, according to the provisions of the several acts and this act ; and no such sum or sums shall be paid or laid out by the trustees of such savings bank in any other manner, or upon any other security whatever : provided, that nothing herein contained shall restrain or prevent any depositor, or any trustee or trustees acting on behalf of any depositor or depositors, or any friendly society, from withdrawing from any such savings bank any sum or sums of money which shall have been deposited by such depositor or friendly society, and investing the same in any other securities. § 27.

And from and after the 20th of November, 1824, every officer or person whosoever receiving any salary or allowance for their services from the funds of any savings banks, who shall be intrusted with the receipt or custody of any sum or sums of money subscribed or deposited for the purposes of any such savings bank, or any interest or dividend from time to time accruing thereby, and all and every other officers or officer receiving salaries or allowances as aforesaid, appointed or employed by or under the trustees or managers of any such savings bank, shall become bound with sureties for the just and faithful execution of such office or trust in a sufficient sum of money. § 28.

And from and after the 20th of November, 1824, the trustees or managers of any savings banks in England and Ireland respectively shall annually cause a general statement of the funds of such savings bank to be prepared, up to the 20th of November in each year, showing the balance or principal sum due to all the depositors collectively in such savings bank, and stating in whose hands such balance shall then be remaining ; and every such annual statement shall be attested by two managers or two trustees, or by one manager and one trustee, and shall be countersigned by the secretary or actuary, and all such annual statements shall be transmitted to the office of the said commissioners for the reduction of the national debt in London or Dublin, as the case may be, within thirty days next after the 20th of November in each year ; and in case the trustees shall neglect or refuse to make out and transmit such account, or in case any such trustees

shall at any time neglect or refuse to obey any orders or directions given by the said commissioners for the reduction of the national debt, or their officer, pursuant to the directions of the said recited acts or this act, it shall be lawful for the said commissioners to close the account of the trustees of such savings bank, and to direct that no further sum shall be received at the bank of England, or at the bank of Ireland, from the trustees of such savings bank, to the account of the said commissioners, until such time as such commissioners shall think fit. § 29.

A duplicate of such account shall be affixed in the office of the savings bank. § 30.

And from and after the 20th of November, 1824, the interest or dividends due to each depositor in each savings bank in England and Ireland respectively shall be computed half-yearly to the 20th of May and the 20th of November, or yearly to the 20th of November in each year, or up to such period nearest to such 20th of May or 20th of November as such interest shall be payable. § 31.

And from and after the passing of this act, in lieu of the accounts by the said recited acts of the 57 Geo. III. required to be annually laid before both houses of parliament by the commissioners for the reduction of the national debt, the following accounts shall be prepared by the said commissioners, and shall be annually laid before both houses of parliament, on or before the 25th of March in every year, if parliament shall be sitting; and if parliament shall not be sitting, then within fourteen days after the commencement of the then next session of parliament; (that is to say)—accounts made up to the 20th of November then next preceding of the gross amount of all sums received and credited, and of all sums paid from the time of the passing of the said several acts of the 57 Geo. III. up to such 20th day of November, by the said commissioners, on account of the trustees of the several savings banks in England and Ireland, and also on account of any friendly societies in England respectively, and of the gross amount of all sums, stocks, funds, and annuities standing in the names of such commissioners on the 20th of November, on account of any such savings banks or friendly societies respectively, and the sums paid for the purchase of such stocks, funds, or securities, and the gross amount of interest or dividends received thereon by the said commissioners, and the gross amount of interest paid by such commissioners up to such 20th of November on all debentures or receipts issued to the trustees of any such savings banks or friendly societies in England and Ireland respectively. § 32.

And from and after the passing of this act it shall be lawful for the commissioners for the reduction of the national debt, or for the proper officer or officers of the said commissioners, from time to time to make application to the lord high treasurer or to the commissioners of his majesty's treasury, stating and certifying what sum of money may be required for satisfying any demands which shall from time to time be made upon the said commis-



sioners by the trustees of any savings bank or friendly society in England or Ireland; and thereupon it shall be lawful for the lord high treasurer or commissioners of the said treasury, or any three of them, in case they shall think fit and proper so to do, by warrant under their hands to cause or direct any number of exchequer bills to be made out at the receipt of his majesty's exchequer in Great Britain, for such sum or sums of money as shall be from time to time stated and certified in any such application of the said commissioners for the reduction of the national debt, or their officer or officers, under the directions of the said commissioners, or for any part of any such sum or sums. § 33.

And it shall be lawful for the governor and company of the bank of England and bank of Ireland respectively, from time to time to advance to the said commissioners for the reduction of the national debt such sum or sums of money, on the credit of any such exchequer bill or bills, and at such times as the said commissioners shall from time to time require, § 34.

Sections 35 and 36 prescribe in what manner such exchequer bills shall be discharged or paid off by the commissioners for the reduction of the national debt.

Whenever the sum to be drawn for by the trustees of any savings bank in England or Ireland respectively, or by the trustees of any friendly society in England, shall amount to the sum of 5000*l.* or upwards, the amount of such draft shall not be payable or paid by the officer of the commissioners for the reduction of the national debt until the expiration of twenty-one days next after the day when the draft for such sum shall be produced to the said officer. § 37.

And from and after the 20th of November, 1824, the schedules annexed to the said recited act of the 57 Geo. III. for the establishment of banks for savings in Ireland, and the several forms in the said schedules contained, marked A, B, C, D, and E, and also the schedule annexed to the said recited act of the 58 Geo. III. for amending the said act of the 57 Geo. III. and the forms in the said schedules contained, marked A, B, C, D, E, F1, F2, and G, shall be repealed, and shall be no longer used or applied in the execution of the said recited acts or this act; and that from and after the said 20th of November, 1824, all receipts, orders, certificates, indorsements, accounts, returns, or instruments whatsoever, which shall be required for carrying into execution this act and the several acts hereinbefore recited, or any of them, as amended by this act, shall be made in such form and manner, and containing such particulars, and under such regulations as shall from time to time be directed or required, or approved of by the commissioners for the reduction of the national debt, or their officer or officers. § 38.

And it is further enacted, that this act shall be and the same is hereby declared to be a full and sufficient indemnity and discharge to the commissioners for the reduction of the national debt, and to the governor and company of the bank of England and of Ireland

respectively, and their officers, for all things to be done or required or permitted to be done pursuant to the said recited acts or this act. § 39.

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WEIGHTS AND MEASURES. 5 Geo. IV. c. 74.

Whereas it is necessary for the security of commerce, and for the good of the community, that weights and measures should be just and uniform; and whereas notwithstanding it is provided by the Great Charter, that there shall be but one measure and one weight throughout the realm, and by the Treaty of Union between England and Scotland, that the same weights and measures should be used throughout Great Britain as were then established in England, yet different weights and measures, some larger and some less, are still in use in various places throughout the United Kingdom of Great Britain and Ireland, and the true measure of the present standards is not verily known, which is the cause of great confusion and of manifest frauds: for the remedy and prevention of these evils for the future, and to the end that certain standards of weights and measures should be established throughout the United Kingdom of Great Britain and Ireland, it is therefore enacted, That from and after the 1st of May, 1825, the straight line or distance between the centres of the two points in the gold studs in the straight brass rod, now in the custody of the clerk of the House of Commons, whereon the words and figures "Standard Yard, 1760," are engraved, shall be the original and genuine standard of that measure of length or lineal extension called a yard; and that the same straight line or distance between the centres of the said two points in the said gold studs in the said brass rod, the brass being at the temperature of 62° by Fahrenheit's thermometer, shall be and is hereby denominated the "Imperial Standard Yard," and shall be and is hereby declared to be the unit or only standard measure of extension, whereby all other measures of extension whatsoever, whether the same be lineal, superficial, or solid, shall be derived, computed, and ascertained; and all measures of length shall be taken in parts or multiples, or certain proportions of the said standard yard; and one third part of the said yard shall be a foot, and the twelfth part of such foot shall be an inch: and the pole or perch in length shall contain five such yards and a half, the furlong 220 such yards, and the mile 1760 such yards. § 1.

And all superficial measure shall be computed and ascertained by the said standard yard, or by certain parts, multiples, or proportions thereof; and the rood of land shall contain 1210 such square yards; and the acre of land shall contain 4840 such square yards, being 160 square perches, poles, or rods. § 2.

And whereas it is expedient that the said standard yard, if lost, destroyed, defaced, or otherwise injured, should be restored of the same length, by reference to some invariable natural standard;



and whereas it has been ascertained by the commissioners appointed to inquire into the subject of weights and measures, that the said yard, when compared with a pendulum vibrating seconds of mean time in the latitude of London, in a vacuum at the level of the sea, is in the proportion of 36 inches to  $39\frac{1393}{10000}$  inches; it is therefore enacted, That if at any time hereafter the said imperial standard yard shall be lost or in any manner destroyed, defaced, or otherwise injured, it shall and may be restored by making, under the direction of the lord high treasurer, or the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, for the time being, a new standard yard, bearing the same proportion to such pendulum as aforesaid as the imperial standard yard bears to such pendulum. § 3.

And from and after the 1st of May, 1825, the standard brass weight of one pound troy weight, made in the year 1758, now in the custody of the clerk of the House of Commons, shall be the original and genuine standard measure of weight, and such brass weight shall be the "Imperial Standard Troy Pound," and shall be the unit or only standard measure of weight, from which all other weights shall be derived, computed, and ascertained; and one twelfth part of the said troy pound shall be an ounce; and one twentieth part of such ounce shall be a pennyweight; and one twenty-fourth part of such pennyweight shall be a grain; so that 5760 such grains shall be a troy pound; and that 7000 such grains shall be a pound avoirdupois, and one sixteenth part of the pound avoirdupois shall be an ounce avoirdupois, and one sixteenth part of such ounce shall be a dram. § 4.

And whereas it is expedient that the said standard troy pound, if lost, destroyed, defaced, or otherwise injured, should be restored of the same weight, by reference to some invariable natural standard: and whereas it has been ascertained, by the commissioners appointed by his majesty to inquire into the subject of weights and measures, that a cubic inch of distilled water, weighed in air by brass weights, at the temperature of  $62^{\circ}$  of Fahrenheit's thermometer, the barometer being at 30 inches, is equal to  $252\frac{458}{1000}$  grains, of which, as aforesaid, the imperial standard troy pound contains 5760; it is therefore enacted, That if at any time hereafter the said imperial standard troy pound shall be lost, or shall be in any manner destroyed, defaced, or otherwise injured, it shall and may be restored by making, under the directions of the lord high treasurer, or the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, a new standard troy pound, bearing the same proportion to the weight of a cubic inch of distilled water as the said standard pound hereby established bears to such cubic inch of water. § 5.

And it is further enacted, that from and after the 1st of May, 1825, the standard measure of capacity, as well for liquids as for dry goods not measured by heaped measure, shall be the gallon,

containing 10lbs avoirdupois weight of distilled water weighed in air, at the temperature of  $62^{\circ}$  of Fahrenheit's thermometer, the barometer being at 30 inches; and that a measure shall be forthwith made of brass, of such contents as aforesaid, under the directions of the lord high treasurer, or the commissioners of his majesty's treasury, or any three or more of them; and such brass measure shall be the "Imperial Standard Gallon," and shall be the unit and only standard measure of capacity, from which all other measures of capacity to be used, as well for wine, beer, ale, spirits, and all sorts of liquids, as for dry goods, not measured by heap measure, shall be derived, computed, and ascertained; and all measures shall be taken in parts or multiples, or certain proportions of the said imperial standard gallon; and the quart shall be the fourth part of such standard gallon, and the pint shall be one-eighth part; and two such gallons shall be a peck, and eight gallons a bushel, and eight bushels a quarter of corn or other dry goods not measured by heaped measure. § 6.

And the standard measure of capacity for coals, culm, lime, fish, potatoes, or fruit, and all other goods and things commonly sold by heaped measure shall be the aforesaid bushel, containing 80lbs avoirdupois of water, the same being made round with a plain and even bottom, and being  $19\frac{1}{2}$  inches from outside to outside. § 7.

And in making use of such bushel, all coals and other goods and things commonly sold by heaped measure, shall be duly heaped up in such bushel, in the form of a cone, such cone to be of the height of at least six inches, and the outside of the bushel to be the extremity of the base of such cone; and three bushels shall be a sack, and twelve such sacks shall be a chaldron. § 8.

Provided always, that all contracts, bargains, sales, and dealings, made or had for or with respect to any coals, culm, lime, fish, potatoes, or fruit, and all other goods and things commonly sold by heaped measure, sold, delivered, done or agreed for by weight or measure, shall be either according to the said standard of weight, or the said standard for heaped measure; but all contracts, bargains, sales, and dealings, made or had for any other goods, wares, or merchandize, or other thing done or agreed for by weight or measure, shall be made and had according to the said standard of weight, or to the said gallon, or the parts, multiples, or proportions thereof; and in using the same, the measures shall not be heaped, but shall be stricken with a round stick or roller, straight and of the same diameter from end to end. § 9.

But nothing herein contained shall authorize the selling in Ireland, by measure, of any articles, matters, or things which by any law in force in Ireland are required to be sold by weight only. § 10.

Copies and models of each of the said standard yard, standard pound, standard gallon, and standard for heaped measure, and of such parts and multiples thereof respectively, as the lord high treasurer of the United Kingdom, or the commissioners of his



majesty's treasury, or any three of them, shall judge expedient, shall, within three calendar months next after the passing of this act, be carefully made and verified under their direction; and copies and models of the said standard yard, pound, gallon, and standard for heaped measure, and of the parts and multiples thereof, shall, within three calendar months after the passing of this act, be deposited in the office of the chamberlains of the exchequer at Westminster; and copies thereof shall be sent to the lord mayor of London, and the chief magistrate of Edinburgh and Dublin, and of such other cities and places in his majesty's dominions or elsewhere, as the lord high treasurer or commissioners of the treasury may from time to time direct. § 11.

And all magistrates and justices of the peace in England or Ireland, or shire or stewartry in Scotland, shall, within six calendar months after the passing of this act, purchase for their respective counties, ridings or divisions, shires or stewartries, cities, towns, or places, or cities or royal burghs, a model and copy of each of the aforesaid standards, and of each of the parts and multiples thereof; which models and copies, when so purchased, shall be compared and verified with the models and copies deposited with the chamberlains of the exchequer in such manner as aforesaid, and upon payment of such fees as are at present payable; and such models and copies shall be placed with such person or persons, and in such place or places, as the said justices and magistrates shall appoint; and the same shall be produced by the keeper or keepers thereof, upon reasonable notice, as any person or persons shall by writing under his or their hand or hands require, the person requiring such production paying the reasonable charges of the same. § 12.

And the expence of procuring and transmitting such models and copies shall be paid in England out of the rates payable in such counties, ridings, or divisions, cities, towns, or places; and in Scotland such expences shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs by the magistrates thereof, and shall be paid along with the land tax payable in such shires or stewartries, and cities or royal burghs, to the collectors of the land tax; and in Ireland such expences shall be paid, in the respective counties and counties of cities and counties of towns, by presentments to be made by grand juries. § 13.

And in all cases of dispute respecting the correctness of any measure of capacity, arising in a place where recourse cannot be conveniently had to any of the aforesaid copies or models, it shall be lawful for any justice of the peace or magistrate having jurisdiction in such place, to ascertain the contents of such measure of capacity by direct reference to the weight of pure or rain water which such measure is capable of containing: ten pounds avoirdupois weight of such water, at the temperature of 62° by Fahrenheit's thermometer, being the standard gallon ascertained

by this act, the same being in bulk equal to  $277 \frac{274}{1000}$  cubic inches, and so in proportion for all parts or multiples of a gallon. § 14.

And after the 1st of May, 1825, all contracts, bargains, sales, and dealings, which shall be made or had within any part of the United Kingdom of Great Britain and Ireland, for any work to be done, or for any goods, wares, merchandize, or other thing to be sold, delivered, done, or agreed for by weight or measure, where no special agreement shall be made to the contrary, shall be deemed, taken, and construed to be made and had according to the standard weights and measures ascertained by this act; and in all cases where any special agreement shall be made, with reference to any weight or measure established by local custom, the ratio or proportion which every such local weight or measure shall bear to any of the said standard weights or measures shall be expressed, declared, and specified in such agreement, or otherwise such agreement shall be null and void. § 15.

And whereas it is expedient that persons should be allowed to use the several weights and measures which they may have in their possession, although they may not be in conformity with the standard weights and measures established by this act; it is therefore enacted, that it shall be lawful for any person or persons to buy and sell goods and merchandize by any weights or measures established either by local custom, or founded on special agreement, provided that, in order that the ratio or proportion which all such measures and weights shall bear to the standard established by this act shall become a matter of common notoriety, the ratio or proportion which all such customary measures and weights shall bear to the said standard shall be painted or marked upon all such customary weights and measures respectively: and nothing herein contained shall extend or be construed to extend to permit any maker of weights or measures, or any person or persons whomsoever, to make any weight or measure at any time after the 1st of May, 1825, except in conformity with the standard weights and measures established by this act. § 16.

And for ascertaining and fixing the payments to be made in consequence of all existing contracts or rents in England and Ireland, payable in grain or malt, or in any other commodity or thing, and in consequence of any toll or rate heretofore payable according to the weights and measures heretofore in use, it is enacted, That, at the general or quarter sessions of the peace, in England or Ireland, next after the expiration of six calendar months after the passing of this act, or at any general quarter sessions of the peace to be holden thereafter, an inquisition shall be taken before the justices assembled, by the oaths of twelve substantial freeholders of the said respective counties, cities, towns, or places, having lands or tenements to the value of 100*l.* *per annum* or upwards, to be summoned by the sheriff or proper officer to inquire into and ascertain the amount, according to the



standard of weight or measure by this act established, of all contracts or rents payable in grain or malt, or any other commodity or thing, or with reference to the measure or weight of any such grain, malt, or other commodity or thing, and the amount of any toll or rate heretofore payable according to any weights and measures heretofore in use ; and such inquisitions shall be transmitted by the respective clerks of the peace, or by the mayor, bailiff, or other head officer, into his majesty's courts of exchequer at Westminster and Dublin respectively, and shall there be enrolled of record, and shall and may be given in evidence in any action or suit at law or in equity ; and the costs and charges thereof shall be paid in England out of the general rate or stock of every such county, riding, division, city, town, or place, and in Ireland by presentments of the several grand juries. § 17.

And for ascertaining and fixing the payments to be made of all stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, payable in grain, malt, or meal, in Scotland, it is enacted, That the sheriff depute or sheriff substitute in each shire, and the stewart depute or stewart substitute in each stewartry, within Scotland, shall, as soon as conveniently may be after the expiration of six calendar months from the passing of this act, summon and impanel a jury of the same number, and with the same qualifications, which are required in the jury who strike the fair prices of grain within the same shire or stewartry, to assemble at such place or places as he shall find convenient ; which jury shall inquire into and ascertain the amount, according to the standards by this act established, of all such stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, payable in grain, malt, meal, or any other commodity or thing, according to the weights and measures heretofore in use within the same shires or stewartries ; and such inquisitions, when taken, shall be transmitted into his majesty's court of exchequer at Edinburgh, and shall there be enrolled of record, and shall and may be given in evidence in any action or suit at law or in equity ; and the amount so to be ascertained shall, when converted into the standard weights and measures, be the rule of payments in regard to all such stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, in all time coming ; and the costs and charges of such inquisitions, and the enrolment thereof, shall be assessed and levied, paid and defrayed, by every such shire or stewartry, in manner as hereinbefore directed in regard to the assessment for the models of the weights and measures to be purchased for the same shire or stewartry. § 18.

And as soon as convenient after such inquisitions shall have been made and enrolled, accurate tables shall be prepared and published under the authority of the said commissioners of his majesty's treasury, showing the proportions between the weights and measures heretofore in use, and the weights and measures hereby established, with such other conversions of weights or measures as the said commissioners may deem to be necessary.

and, after the publication of such tables, all future payments to be made shall be regulated according to such tables. § 19.

Whereas the weights and measures by which the rates and duties of the customs and excise, and other his majesty's revenue, have been heretofore collected, are different from the weights and measures of the same denominations directed by this act: and whereas the alteration of such weights and measures may, without due care, greatly affect the revenue: for the prevention thereof it is therefore enacted, That so soon as conveniently may be after the passing of this act, accurate tables shall be prepared and published under the direction of the commissioners of the treasury, in order that the several rates and duties of customs and excise, and other his majesty's revenue, may be adjusted and made payable according to the respective quantities of the legal standards directed by this act; and from and after the 1st of May, 1825, and the publication of such tables, the several rates and duties thereafter to be collected by any of the officers of the customs or excise, or other his majesty's revenue, shall be collected and taken according to the calculations in the said tables. § 20.

And all the powers, rules, and regulations in force, in the several acts hereinafter mentioned, for the ascertaining, examining, seizing, breaking, and destroying any weights, balances, or measures, shall be put in execution in Great Britain for the ascertaining and examining, and for the seizing, breaking, and destroying of any weights or measures not conformable to the standard weights and measures authorized by this act, and for the punishment of any person or persons having any defective weight or measure, not conformable to the said standard; viz. the 29 Geo. II. c. 25. intituled, "*An act for appointing a sufficient number of constables for the service of the city and liberty of Westminster, and to compel proper persons to take upon them the office of jurymen, to prevent nuisances and other offences within the said city and liberty;*" the 81 Geo. II. c. 17. for explaining, amending, and rendering more effectual the said recited act of the twenty-ninth year; the 35 Geo. III. c. 102. intituled, "*An act for the more effectual prevention of the use of defective weights, and of false and unequal balances;*" the 37 Geo. III. for explaining and amending the said act of 35 Geo. III.; the 55 Geo. III. c. 43. intituled, "*An act for the more effectual prevention of the use of false and deficient measures.*" § 21.

And all the powers, rules, and regulations in force in the several acts hereinafter mentioned, passed in the parliament of Ireland, shall be applied and put in execution in Ireland, for the ascertaining and examining, and for the seizing, breaking, and destroying of any weights or measures not conformable to the standard weights and measures ascertained and authorized by this act, and for the punishment of any person or persons having any defective weight or measure, or any weight or measure not conformable to the said standard, and for the carrying into effect the several provisions of the said recited acts with reference to



the said standard weights and measures; viz. the 4 Ann, for regulating the weights used in Ireland; the 11 Geo. II. for buying and selling all sorts of corn and meal, and other things in the said act mentioned, by weight; the 25 Geo. II. intituled, "*An act for buying and selling all sorts of corn and meal, and other things therein mentioned, by weight, and for the more effectual preventing the frauds committed in the buying and selling thereof*;" the 27 Geo. III. intituled, "*An act for establishing market juries in cities*," and which said last-mentioned act was by the 28 Geo. III. extended to all counties of towns and corporate towns in Ireland. § 22.

And it is further enacted, that the several statutes, ordinances, and acts, and parts of the several statutes, ordinances, and acts hereinafter mentioned and specified, so far as the same relate to the ascertaining or establishing any standards of weights and measures, or to the establishing or recognizing certain differences between weights and measures of the same denomination, shall, from and after the 1st of May, 1825, be repealed; (that is to say)—

Certain ancient statutes or ordinances made previous to the reign of king Edward III. but of uncertain date, intituled or known by the names or descriptions following:—"*Assisa Panis et Cervisie*, or "The Assize of Bread and Ale;" "*Statutum de Pistoribus, &c.*" or "Statute concerning Bakers, &c.;" "*Assisa de Ponderibus et Mensuris*," or "*Tractatus de Ponderibus*," or "*Compositio de Ponderibus*," or "Assize of Weights and Measures;" "*Statutum de Admensuratione Terræ*," or "Statute for the measuring of Land;" "*Compositio Ulnarum et Perticarum*."

14 Edw. III. c. 12. so far as relates to the making of bushels and weights, and sending the same into every country, and as directs that the sack of wool ought to contain 26 stones, and every stone 14lb.

18 Edw. III. st. 2. c. 4. so far as relates to commissioners to assay weights and measures.

25 Edw. III. st. 5. c. 9, 10. so far as relates to auncel weight, and the weight of the sack of wool, and as relates to the bushel, half bushel, peck, gallon, pottle, and quart, and to the quarter and measure of corn.

27 Edw. III. st. 2. c. 10. called the Ordinance of the Staples, so far as relates to the uniformity of weights and measures throughout the realm.

31 Edw. III. st. 1. c. 2, 5. so far as relates to the regulating the price and weight of wools, and as relates to the tun of wine and the gauging thereof.

34 Edw. III. c. 5. whereby justices of the peace are empowered to inquire of weights and measures.

4 Ric. II. c. 1. so far as relates to the gauging of vessels of wine, honey, oil, and other liquors brought into the realm.

13 Ric. II. st. 1. c. 9. so far as relates to the regulating of

- weights and measures, and to the buying and selling of wool at 14lbs. the stone.
- 15 Ric. II. c. 4. so far as relates to weights and measures of corn, wine, ale, and malt.
- 16 Ric. II. c. 3. so far as relates to the clerk of the market, and the assay of weights and measures made by him, and the using such weights and measures.
- 1 Hen. V. c. 10. so far as concerns the true measure of corn.
- 2 Hen. VI. c. 11. so far as relates to the several measures of vessels of wine, eels, herrings, and salmon.
- 8 Hen. VI. c. 5. so far as relates to the confirming and amending former statutes concerning weights and measures, and requiring common balances and weights to be kept in all cities, boroughs, and towns.
- 9 Hen. VI. c. 6. so far as relates to the explaining the said statute of the 8 Hen. VI. concerning weights and measures, as relates to the burgesses of Dorchester.
- 9 Hen. VI. c. 8. so far as relates to the weight of a wey of cheese.
- 11 Hen. VI. c. 8. so far as relates to the confirming and amending former statutes concerning weights and measures.
- 18 Hen. VI. c. 17. so far as relates to the gauging of vessels of wine, oil, and honey.
- 22 Edw. IV. c. 2. so far as relates to the packing of barrelled fish.
- 1 Ric. III. c. 13. intituled, "*An act to ascertain the contents of vessels of wine and oil.*"
- 7 Hen. VII. c. 4. intituled, "*An act for weights and measures.*"
- 7 Hen. VII. c. 8. "*An act to pay custom for every butt of malmsey.*"
- 11 Hen. VII. c. 4. intituled, "*An act for weights and measures.*"
- 12 Hen. VII. c. 5. intituled, "*An act for weights and measures.*"
- 23 Hen. VIII. c. 4. intituled, "*An act that no brewers shall make their barrels, &c.*"
- 24 Hen. VIII. c. 6. intituled, "*An act concerning the sale of wine.*"
- 12 Eliz. (Irish Act,) intituled, "*An act for establishing the standard of measures for corn.*"
- 13 Eliz. c. 11. so far as relates to the assize of herring barrels.
- 23 Eliz. c. 8. so far as relates to the barrel, kilderkin, or firkin of honey.
- 43 Eliz. c. 14. intituled, "*An act concerning the assize of fuel.*"
- 16 Car. I. c. 19. intituled, "*An act for regulating the office of clerk of the market, and the reformation of weights and measures.*"
- 12 Car. II. c. 23. so far as relates to the contents of the barrel of beer and ale.
- 22 Car. II. c. 8. intituled, "*An act for ascertaining the measures of corn and salt.*"
- 22 & 23 Car. II. c. 12. intituled, "*An additional act for ascertaining the measures of corn and salt.*"
- 1 W. & M. st. 1. c. 24. §) so far as relates to the contents of the barrel of beer and ale.



- 5 & 6 W. & M. c. 7. as relates to the measure and weight of salt.
- 7 W. III. (Irish Act,) for the better regulating of measures.
- 7 & 8 W. & M. c. 31. (Irish Act,) so far as relates to the measure and weight of salt.
- 9 & 10 W. III. c. 6. intituled, "*An act that all retailers of salt shall sell by weight.*"
- 10 & 11 W. III. c. 21. so far as relates to the contents of a barrel of vinegar, vinegar beer, or liquor preparing for vinegar.
- 10 & 11 W. III. c. 22. so far as relates to the weight or measure of rock salt.
- 11 & 12 W. III. c. 15. intituled, "*An act for ascertaining the measures for retailing ale and beer.*"
- 1 Ann. st. 1. c. 15. intituled, "*An act to ascertain the water measure of fruit.*"
- 1 Ann. c. 21. so far as relates to the weight and measure of foreign salt and rock salt.
- 2 Ann. (Irish Act,) for supplying the defects of the 7 W. III.
- 5 & 6 Ann. c. 27. so far as relates to the contents of the gallon, tun, butt, pipe, and hogshead of wine.
- 9 Ann. c. 6. so far as relates to the chaldron or chaldier and bushel of coals,
- 9 Ann. c. 15. for making more effectual the 43 Eliz.
- 10 Ann. c. 6. intituled, "*An act for explaining and altering the laws concerning the assizes of fuel, &c.*"
- 1 Geo. II. (Irish Act,) so far as relates to the dimensions of the half barrel, bushel, half bushel, peck, or half peck of coals.
- 8 Geo. II. c. 12. so far as relates to the computation of the distance in miles between the pits and refineries of rock salt.
- 9 Geo. II. (Irish Act,) intituled, "*An act for the ascertaining the gauge and the measure of barrels, &c.*"
- 24 Geo. II. c. 31. so far as relates to the weight of hemp or flax.
- 26 Geo. III. (Irish Act,) for preventing frauds in the measurement of lime.
- 38 Geo. III. c. 89. as relates to the weight of a bushel of salt.
- 43 Geo. III. c. 69. so far as relates to the quart, gallon, and barrel of beer or ale.

And all the said recited statutes or ordinances and acts, and parts of statutes and acts, so far as the same or any of them relate to the ascertaining or establishing any standards of weights and measures, or the establishing or recognizing certain differences between weights and measures of the same denomination, but no farther or otherwise, shall, from and after the said 1st of May, 1825, be repealed; save and except only so far as any such statutes or acts, or any part thereof, repeal any other statutes or acts, or any part thereof, which relate to the ascertaining or establishing any standard of weights and measures, or to the establishing or recognizing certain differences between weights and measures of the same denomination. § 23.

Nothing in this act shall extend or be construed to extend to

repeal the 31 Geo. II. c. 17. nor in any manner to affect or alter the power given by the said act to the dean, high steward, or his deputy, and the burgesses of the city of Westminster, to appoint a proper officer to size and seal all weights and measures used by persons dealing by weight and measure in the said city of Westminster and the liberties thereof. § 24.

And it is further enacted, that from and after the passing of this act, all tuns, pipes, tertians, hogsheads, or other vessels of wine, oil, honey, and other gaugeable liquors, imported into the port of London, and landed within the city and liberties thereof, shall be subject and liable to be gauged, as heretofore, save and except that the contents of all such tuns, pipes, tertians, hogsheads, and other vessels, shall be ascertained by the standard measure of capacity for liquids directed by this act, and the multiples thereof; and all such tuns, pipes, tertians, hogsheads, or other vessels that shall be found wanting of the true contents, to be ascertained as aforesaid, together with the wine and other liquids therein contained, shall be subject and liable to the like seizures and forfeitures as is or are provided by any act or acts of parliament; and the moiety of such forfeitures due to his majesty shall be, in like manner as heretofore, accounted for by the lord mayor, as such gauger, and his deputies, to his majesty, in his court of exchequer. § 25.

This act, or any thing herein contained, shall not extend to prohibit, defeat, injure, or lessen the right of the mayor and commonalty and citizens of London, or of the lord mayor of the said city, in, to, or concerning the office of gauger of wines, oils, honey, and other gaugeable liquors imported and landed within the city of London and the liberties thereof. § 26.

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#### VAGRANTS. 5 Geo. IV. c. 83.

By this act, all provisions heretofore made relative to idle and disorderly persons, rogues, and vagabonds, incorrigible rogues, or other vagrants, in England, are repealed, except only as to any offence committed before the passing of this act. § 1.

And whereas by the 32 Geo. III. c. 45. intituled, "*An act to explain and amend the 17 Geo. II. intituled, 'An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction,'*" his majesty's judges of assizes, and the justices at the general or quarter sessions, or any justice of the peace, are empowered to order any convict upon his discharge from prison to be conveyed by pass in manner therein directed; and are also empowered to convey by pass any person who shall be acquitted at the assizes or general or quarter sessions, or discharged by proclamation or otherwise, who shall apply to be conveyed as aforesaid: and whereas doubts have arisen whether such parts of such act as give such power were by the provisions of the act of the 3 Geo. IV.



repealed; and whereas it is expedient to remove such doubts; it is enacted, That all the provisions of the said recited act of the 32 Geo. III. as give such power shall be and are hereby repealed.

§ 2.

And it is further enacted, that every person being able wholly or in part to maintain himself or herself, or family, by work or other means, and wilfully refusing or neglecting so to do, by which he or she or any of his or her family shall have become chargeable to any parish, township, or place; every person returning to and becoming chargeable in any parish, township, or place from whence he or she shall have been legally removed, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled there; every petty chapman or pedlar wandering abroad and trading, without being duly licensed, or otherwise authorized by law; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do, shall be deemed *an idle and disorderly person* within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence of one or more credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month. § 3.

And it is further enacted, that every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person; every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his majesty's subjects; every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female; every person wandering abroad and endeavouring by the exposure of wounds or deformities to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; every person running away and leaving his wife, or children, chargeable to any parish, township, or place; every person playing or betting in any street

road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance; every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or outbuilding, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument, with intent to commit any felonious act; every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose; every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony; and every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending, and being subsequently convicted of the offence for which he or she shall have been so apprehended, shall be deemed a *rogue and vagabond* within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence of one or more credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited. § 4.

And every person breaking or escaping out of any place of legal confinement before the expiration of the term for which he or she shall have been committed by virtue of this act; every person committing any offence against this act which shall subject him or her to be dealt with as a *rogue and vagabond*, such person having been at some former time adjudged so to be and duly convicted thereof; and every person apprehended as a *rogue and vagabond*, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended, shall be deemed an *incorrigible rogue*; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness) to the house of correction, there to remain until the next general or quarter sessions of the peace; and every such offender shall be there kept to hard labour during the period of his or her imprisonment. § 5.

And it shall be lawful for any person whatsoever to apprehend



any person who shall be found offending against this act, and forthwith to take and convey him or her before some justice of the peace, or to deliver him or her to any constable or other peace officer; and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into custody, and to take and convey him or her before some justice of the peace, or shall not use his best endeavours to apprehend and to convey before some justice of the peace any person that he shall find offending against this act, it shall be deemed a neglect of duty in such officer, and he shall on conviction be punished in such manner as is hereinafter directed. § 6.

And it shall be lawful for any justice of the peace, upon oath being made before him that any person hath committed or is suspected to have committed any offence against this act, to issue his warrant to apprehend and bring before him or some other justice of the peace the person so charged, to be dealt with as is directed by this act. § 7.

And it shall be lawful for any constable, peace officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, to take any horse, mule, ass, cart, car, caravan, or other vehicle, or goods in the possession or use of such person, and to take and convey the same as well as such person before some justice of the peace, and for every justice of the peace to order that such offender shall be searched, and that his or her trunks, boxes, bundles, parcels, or packages shall be inspected in the presence of the said justice, and of him or her, and also that any cart, car, caravan, or other vehicle which may have been found in his or her possession or use, shall be searched in his or her presence; and to order that any money which may be then found upon such offender shall be paid and applied towards the expence of apprehending, conveying to the house of correction, and maintaining such offender during the time for which he or she shall have been committed; and if upon such search money sufficient for the purposes aforesaid be not found, it shall be lawful to order that a part, or if necessary the whole of such other effects then found, shall be sold, and the produce shall be paid and applied as aforesaid, and that the overplus, after deducting the charges of such sale, shall be returned to the said offender. § 8.

And when any justice shall commit any such incorrigible rogue to the house of correction, there to remain till the next general or quarter sessions, or when any such idle and disorderly person, rogue, and vagabond, or incorrigible rogue, shall give notice of his or her intention to appeal against the conviction, and shall enter into recognizance to prosecute such appeal, such justice shall require the person by whom such offender shall be apprehended, and the person or persons whose evidence shall appear to him to be material to prove the offence, to become bound in recognizance to appear at the said general or quarter sessions; and the justices of the peace are hereby authorized, at the request

of any person who shall have become bound in any such recognizance, to order the treasurer of the county, riding, division, or place in which the offence shall have been committed, to pay such sum or sums of money as to the court shall seem reasonable and sufficient to reimburse for the expences he, she, or they shall have been severally put to, and for their trouble and loss of time; and in case any such person or persons as aforesaid shall refuse to enter into such recognizance, it shall be lawful for such justice to commit them to the common gaol, there to remain until they shall enter into such recognizance, or shall be otherwise discharged by due course of law. § 9.

And when any incorrigible rogue shall have been committed to the house of correction, there to remain until the next general or quarter sessions, it shall be lawful for the justices of the peace there assembled to examine into the circumstances of the case, and to order, if they think fit, that such offender be further imprisoned and kept to hard labour for any time not exceeding one year from the time of making such order, and to order further, if they think fit, that such offender (not being a female) be punished by whipping. § 10.

And in case any constable or other peace officer shall neglect his duty in any thing required of him by this act, or in case any person shall disturb or hinder any constable or other peace officer in the execution of this act, or shall be aiding, abetting, or assisting therein, every such offender shall forfeit any sum not exceeding 5*l.*; and in case such offender shall not forthwith pay such sum, the same shall be levied by distress and sale; and if sufficient distress cannot be found, one or more such justice or justices may commit the person to the house of correction for any time not exceeding three calendar months, or until such fine be paid; and the said justice or justices shall cause the said fine, when paid, to be forthwith delivered to the treasurer of the county, riding, division, or place where such offence shall have been committed, to be by him added to and used as part of the stock of the said county, riding, division, or place. § 11.

And in case any constable or other peace officer shall be convicted before any justice of the peace, for any neglect of duty required of him by this act; or of any disobedience of any lawful warrant or order issued under the provisions of this act, and in case any two or more justices of the peace shall impose any fine, or direct any penalty to be paid by such officer under and by virtue of the 33 Geo. III. c. 55. intituled, "*An act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers, for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrals,*" or under any other powers enabling such justices in that behalf, it shall be lawful for such justices, upon conviction of any such offender, to reimburse and allow to the person on whose complaint or information such offender shall have been convicted,



all necessary costs and expences he may have thereby incurred, or by any appeal made in consequence thereof, by making an order under his or their hands and seals upon the treasurer of the county, riding, division, or place, to pay to such person the amount of such costs and expences. § 12.

And it shall be lawful for any justice of the peace, upon information on oath before him made, that any person hereinbefore described to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, is or is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, to authorize any constable or other person to enter at any time into such house, and to apprehend and bring before him or any other justice of the peace every such idle and disorderly person, rogue and vagabond, and incorrigible rogue, as shall be found therein. § 13.

And any person aggrieved by any act or determination of any justice of the peace out of sessions, may appeal to the next general or quarter sessions, giving to the justice notice in writing of such appeal, and of the ground thereof, within seven days after such act or determination, and before the next general or quarter sessions, and entering within such seven days into a recognizance, with sufficient surety, personally to appear and prosecute such appeal; and upon such notice being given, and such recognizance entered into, such justice is empowered to discharge such person out of custody. § 14.

Nothing herein contained shall extend or be construed to extend so as to restrain, hinder, or prevent any visiting justice of any prison from granting a certificate or other instrument for enabling any person discharged from such prison to have or receive alms or relief in or upon his or her route to his or her place of settlement; provided that such certificate be made and drawn up in compliance with the directions and provisions of any act or acts of parliament for the better regulation and management of gaols, houses of correction, or prisons: and if any person to whom any such certificate or instrument shall be delivered, shall act in any manner contrary to the directions or provisions thereof, or shall loiter upon his or her route, or shall deviate therefrom, every such person shall be deemed to be a rogue and vagabond, and shall be punished accordingly. § 15.

After the passing of this act, no justice of peace, mayor, or other magistrate, shall grant to any person other than a person entitled thereto under the 43 Geo. III. intituled, "*An act for the relief of soldiers, sailors, and marines, and the wives of soldiers in the cases therein mentioned, so far as relates to England,*" any certificate or other instrument enabling such person to ask alms or relief in their route to any place, or for any other purpose whatever; and every person asking alms or relief under and by virtue of any certificate or other instrument hereby prohibited, is liable to be declared to be an idle and disorderly person, in like





directed that any person shall be punished as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, in every such case, whether such person shall or shall not have committed any offence against this act, every such person shall be punished under the provisions, powers, and directions of this act. § 21.

Nothing herein contained shall be construed to extend or apply to Scotland or Ireland; nor to alter any law now in force for the removal of poor persons born in Scotland, Ireland, or the Isles of Man, Jersey, and Guernsey, and becoming chargeable to parishes in England, such persons not having committed acts of vagrancy as hereinbefore described; nor to alter any law now in force relating to lunatic vagrants. § 22.

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BANKRUPTCY. 5 Geo. IV. c. 98.

The laws and statutes relative to bankruptcy were, previous to the 5 Geo. IV. c. 98. extremely numerous and complicated: this act, however, is of a very sweeping nature, for it absolutely repeals, from the 1st of May, 1825, all former enactments respecting bankrupts. Its preamble recites, that whereas it is expedient to amend the laws relating to bankrupts, and to simplify the language thereof, and to consolidate the same so amended and simplified in one act, and to make other provisions respecting bankrupts; it therefore enacts, That the following statutes (including the whole of the acts upon the subject, from the first enactment, the 34 & 35 Hen. VIII. c. 4. down to the 3 Geo. IV. c. 81.) be repealed; viz. the 34 & 35 Hen. VIII. c. 4. intituled, "*An act against such persons as do make bankrupt;*" the 13 Eliz. c. 7. intituled, "*An act touching orders for bankrupts;*" the 1 Jac. I. c. 15. intituled, "*An act for the better relief of the creditors against such as shall become bankrupts;*" the 21 Jac. I. c. 19. intituled, "*An act for the further description of a bankrupt, and relief of creditors against such as shall become bankrupts, and for inflicting corporal punishment upon the bankrupts in some special cases;*" the 13 & 14 Car. II. c. 24. intituled, "*An act declaratory concerning bankrupts;*" the 10 Ann. c. 15. intituled, "*An act for repealing a clause in the above-mentioned statute of the 1 Jac. I. c. 15. and for the explanation of the laws relating to bankruptcy in cases of partnership;*" the 7 Geo. I. c. 31. intituled, "*An act for explaining and making more effectual the several acts concerning bankrupts;*" the 5 Geo. II. c. 30. intituled, "*An act to prevent the committing of frauds by bankrupts;*" the 19 Geo. II. c. 32. intituled, "*An act for amending the laws relating to bankrupts;*" so much of the 24 Geo. II. c. 57. the title of which begins with the words "*An act to continue several laws therein mentioned, for preventing theft and rapine,*" and concludes with the words "*and to make some further provisions in relation to the signing of certificates for the discharge of bankrupts.*" as relates to the prevention of frauds by

bankrupts, and to some further provisions in relation to the signing of certificates for the discharge of bankrupts;" the 4 Geo. III. c. 33. intituled, "*An act for the preventing inconveniences arising in cases of merchants, and such other persons as are within the description of the statutes relating to bankrupts being entitled to privilege of parliament, and becoming insolvent;*" so much of the 36 Geo. III. c. 90. intituled, "*An act for the relief of persons equitably and beneficially entitled to or interested in the several stocks and annuities transferable at the Bank of England,*" as relates to trustees in whose names stock shall be standing at the Bank, becoming bankrupt, and to bankrupts refusing to transfer stock standing in their own right; the 37 Geo. III. c. 124. intituled, "*An act to make perpetual an act passed in the fifth year of the reign of his late majesty, intituled, 'An act to prevent the committing of frauds by bankrupts:'*" so much of the 45 Geo. III. c. 124. intituled, "*An act to amend an act passed in the fourth year of his present majesty, intituled, 'An act for preventing inconveniences arising in cases of merchants, and such other persons as are within the description of the statutes relating to bankrupts being entitled to privilege of parliament, and becoming insolvent,' and to prevent delay in the entering appearances in actions brought against persons having privilege of parliament,*" as relates to the execution of certain bonds by traders having privilege of parliament, and to the disobedience by such traders of orders for payment of money;" the 46 Geo. III. c. 135. intituled, "*An act to amend the laws relating to bankrupts;*" the 49 Geo. III. c. 121. intituled, "*An act to alter and amend the laws relating to bankrupts;*" the 56 Geo. III. c. 137. intituled, "*An act to extend the provisions of an act of the first year of the reign of king James the First, intituled, 'An act for the better relief of the creditors against such as shall become bankrupts;'*" so much of the 1 Geo. IV. c. 115. intituled, "*An act to repeal so much of the several acts passed in the thirty-ninth year of the reign of Elizabeth, the fourth of George the First, the fifth and eight of George the Second, as inflicts capital punishment on certain offences therein specified, and to provide more suitable and effectual punishment for such offences,*" as relates to the punishment of frauds committed by bankrupts; the 3 Geo. IV. c. 74. intituled, "*An act to amend the laws relating to bankrupts under joint commissions;*" and lastly, the 3 Geo. IV. c. 81. intituled, "*An act to amend the laws relating to bankrupts.*"

#### *What Persons are liable to be made Bankrupts.*

By this act, the 5 Geo. IV. c. 98. it is enacted, That all bankers, brokers, underwriters, and persons insuring ships or their freight or other matters against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, innkeepers, stage-coach proprietors, brewers, maltsters, dyers, printers, bleachers, fullers, scavengers, manufacturers of alum or kelp, cattle or sheep salesmen; and all persons engaged in any traffic of drawing and redrawing, negotiating or discounting bills



of exchange, promissory notes, or negotiable securities, except exchequer, navy, or victualling bills, or ordnance debentures; and all persons making bricks or burning lime for sale, being tenants, lessees, or partners in such trade or undertaking; and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail: and all persons, who, either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt: provided, that no farmer, grazier, common labourer, or workman for hire, receiver-general of the taxes, or member of or subscriber to any incorporated, commercial, or trading companies established by charter, or by or under the authority of any act of parliament, shall be deemed, as such, a trader liable by virtue of this act to become bankrupt. § 2.

*What constitutes an Act of Bankruptcy.*

If any such trader shall depart this realm, or being out of the realm shall remain abroad, or depart from his dwelling-house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, money, or chattels to be attached, sequestered, or taken in execution, or make or cause to be made, either within the United Realm or elsewhere, any grant or conveyance of any of his lands, tenements, goods, or chattels, or make or cause to be made any surrender of any of his copyhold lands or tenements, or make or cause to be made any gift, delivery, or transfer of any of his goods or chattels, every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors in the recovery of their debts, shall be deemed to have thereby committed an act of bankruptcy. § 3.

And if any such trader shall, at any meeting of his creditors, declare or admit that he is insolvent, or unable to meet his engagements; or if any such trader, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall, upon such or any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison for twenty-one days; or if any such trader, having been so arrested, committed, or detained, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy: provided, that if any such trader shall be in prison at the time of the commencement of this act (1st May, 1825,) such trader shall not be deemed to have committed an act of bankruptcy by lying in prison, until he shall have lain in prison for the period of two months. § 4.

And if any such trader shall petition to take the benefit of the present or any future act for the relief of insolvent debtors, such

petition, when filed, shall be an act of bankruptcy; but no commission shall issue thereupon, unless it be sued out within two calendar months next after notice of such petition has been inserted in the London Gazette. § 5.

And if any such trader shall file, in the office of the lord chancellor's secretary of bankrupts, a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent, or unable to meet his engagements, the said secretary or his deputy shall sign a memorandum that such declaration had been filed, which shall be authority for the printer of the London Gazette to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement, be an act of bankruptcy committed by such trader at the time when such declaration was filed: but no commission shall issue thereupon unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the London Gazette within eight days after such declaration was filed: and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after the insertion of such advertisement, in case such commission is to be executed in London; or before eight days after such insertion, in case such commission is to be executed in the country; and in all proceedings before the commissioners, the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed. § 6.

And no commission, under which the adjudication shall be grounded on the act of bankruptcy being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person. § 7.

And if any such trader, liable by virtue of this act to become bankrupt, shall, after a docket struck against him, pay to the person or persons who struck the same, or any of them, money, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction, or security, shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck as aforesaid, the lord chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may issue upon such last-mentioned or any other act of bankruptcy; and every person so receiving such money, gift, delivery, satisfaction, or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security as aforesaid, or the full value thereof, to such person or persons as the commissioners acting under such original commission, or any new commission, shall appoint, for the benefit of the creditors of such bankrupt. § 8.

And if any such trader having privilege of parliament, shall



commit any of the aforesaid acts of bankruptcy, a commission of bankrupt may issue against him ; and the commissioners, and all other persons acting under such commission, may proceed thereon in like manner as against other bankrupts ; but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony. § 9.

And if any creditor of any such trader having privilege of parliament, to such amount as is hereinafter declared requisite to support a commission, shall file an affidavit in any court of record at Westminster, that such debt is justly due to him, and that such debtor, as he verily believes, is such trader as aforesaid, and shall sue out of the same court a summons, or an original bill and summons against such trader, and serve him with a copy thereof, if such trader shall not, within one calendar month after personal service of such summons, pay, secure, or compound for such debt to the satisfaction of such creditor, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court shall approve of, to pay such sum as shall be recovered in such action, together with such costs as shall be given, and within one calendar month next after personal service of such summons cause an appearance to be entered to such action in the proper court in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons ; and any such creditor or creditors of such trader may sue out a commission against him, and proceed thereon in like manner as against other bankrupts. § 10.

And if any decree or order shall have been pronounced in any cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of parliament, ordering to pay any sum of money, and such trader shall disobey the same, the person entitled to receive such sum, or interested in enforcing the payment thereof, may apply to the court to fix a peremptory day for the payment, which shall accordingly be fixed by an order for that purpose ; and if such trader, being personally served with it eight days before the day therein appointed, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof. § 11.

*Of the Commission, and Proceedings under it.*

The lord chancellor may, upon petition made to him in writing, against any trader having committed any act of bankruptcy, by any creditor or creditors, by commission under the great seal, appoint such persons as to him shall seem fit, who shall have the powers and authorities hereinafter mentioned ; and such petitioning creditor or creditors shall, before any commission be granted, make an affidavit in writing before a master in chancery (which shall be filed with the proper officer) of the truth of his or their respective debt ; and shall likewise give bond to the lord chan-

cellor, in the penalty of 200*l.* to be conditioned for proving his or their debt, as well before the commissioners as upon any trial at law, and also for proving the party to have committed an act of bankruptcy, and to proceed on such commission ; but if such debt or debts shall not be really due, or if after such commission it be not proved that the party had committed an act of bankruptcy at the time of the issuing of the commission, and it shall also appear that such commission was taken out fraudulently or maliciously, the lord chancellor may order satisfaction to be made to him or them, and for the better recovery thereof may assign such bond or bonds to the party or parties who may sue for the same in his and their name or names. § 12.

And that the petitioning creditor or creditors shall, at his or their own costs, sue forth and prosecute the commission until the choice of assignees ; and the commissioners shall, at their meeting for such choice, ascertain such costs, and by writing under their hands direct the assignees to reimburse such petitioning creditor or creditors such costs out of the first money that shall be got in under the commission. And all bills of fees or disbursements of any solicitor or attorney employed under any commission shall be settled by the commissioners ; provided such bills do not contain any charge respecting any action at law or suit in equity, in which case the same shall be settled by the proper officer of the court in which the business contained in such bill, or the greatest part in amount or value thereof, shall have been transacted ; and the same so settled shall be paid by the assignees to such solicitor or attorney : provided, that any creditor who shall have proved to the amount of 20*l.* or upwards, if he be dissatisfied with such settlement, may have the same settled by a master in chancery, who shall receive for such settlement, and the certificate thereof, 20*s.* § 13.

And no commission shall be issued, unless the single debt of such creditor, or of two or more persons being partners, petitioning for the same, shall amount to 100*l.* or upwards : or unless the debt of two creditors shall amount to 150*l.* or upwards ; or unless the debt of three or more creditors shall amount to 200*l.* or upwards ; and every person who has given credit to any trader upon valuable consideration for any sum which shall not have become payable at the time such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have any security for such sum or not. § 14.

And any creditor or creditors whose debt is sufficient to entitle him or them to petition for a commission against all the partners of any firm, may petition for a commission against one or more partners ; and every commission issued upon such petition shall be valid, although it does not include all the partners of the firm ; and in every commission against two or more persons, the lord chancellor may supersede such commission as to one or more of such persons ; and the validity of such commission shall not be thereby affected, as to any person as to whom such commission



is not ordered to be superseded, nor shall any such person's certificate be thereby affected. § 15.

And if after a commission issued against two or more members of a firm, any other commission shall be issued against any other member of such firm, such other commission shall be directed to the commissioners to whom the first was directed; and immediately after the adjudication under such other commission, all the estate, real and personal, of such bankrupt shall, in case assignees have been chosen, vest in such assignees, and all separate proceedings under such other commission shall be stayed, and such commission shall, without affecting the validity of the first commission, be annexed to and form part of the same: provided, that the lord chancellor may direct that such other commission be issued to any other commissioners, or that such other commission shall proceed either separately or in conjunction with the first commission. § 16.

If, after adjudication, the debt of the petitioning creditor or creditors, or any of them, be found insufficient to support a commission, the lord chancellor may, upon the application of any other creditor or creditors, having proved any debt or debts sufficient to support a commission, order the said commission to be proceeded in. § 17.

No commission shall be deemed invalid by reason of any act of bankruptcy prior to the debt of the petitioning creditor or creditors, or any of them; provided there be a sufficient act of bankruptcy subsequent to such debt. § 18.

The lord chancellor may direct an auxiliary commission to issue for proof of debts under 20*l.* and for the examination of witnesses, or for either of such purposes; and every such commission heretofore issued is hereby declared valid; and the commissioners in every such commission, issued for the examination of witnesses, shall possess the same powers to compel the attendance, and to examine witnesses, and to enforce obedience to such examination, as are possessed by the commissioners in any original commission. § 19.

No commissioner shall be capable of acting in the execution of any of the powers and authorities of this act (except the power of administering the oath next hereinafter mentioned) until he shall have taken an oath to the effect following; (that is to say)—

' I, *A. B.* do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a commissioner, in a commission of bankruptcy against \_\_\_\_\_ and that without favour or affection, prejudice or malice. So help me God.'

Which oath the commissioners are empowered and required to administer one to another in the same commission named; and they shall enter and keep a memorial thereof, signed by them respectively, among the proceedings under each commission. § 20.

The commissioners shall be paid the fee of 20*s.* each for every

meeting, and the like sum for their certificate of the choice of assignees, and for the signature of the bankrupt's certificate; and where any commission shall be executed in the country, every commissioner being a barrister at law, shall receive a further fee of 20s. for each meeting; and in case his usual place of residence is distant seven miles or upwards from the place where such meetings are holden, he may receive a further sum of 20s. for every such meeting; and every commissioner who shall receive from the creditors, or out of the estate of the bankrupt, any further sum than as aforesaid, or who shall eat or drink at the charge of the creditors, or out of the estate of the bankrupt, or order any such expence to be made, shall be disabled for ever from acting in such or any other commission. § 21.

At every meeting under any commission to be executed in the country, wherein any one or more of the commissioners named may be a barrister, such or as many of them as shall be willing to attend, not exceeding three at each meeting, shall be the acting commissioner or commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other commissioners. § 22.

No postponement or continuance of any public or private meeting to another hour of the same day, where the parties are ready to proceed, shall entitle the commissioners to any further fees, unless such meeting shall have been sitting for the space of two hours at the least. § 23.

The commissioners, after they have taken their oath, may, by writing under their hands, summon before them any person whom they shall believe capable of giving any information concerning the trading of, or any act or acts of bankruptcy committed by the bankrupt, and may also require any person so summoned to produce any books, papers, deeds, and writings, and other documents, in his custody, possession, or power, which may appear to be necessary to establish such trading, or act of bankruptcy; and every such person so summoned shall incur such danger or penalty for not coming, or for refusing to be sworn and examined, or for not disclosing the truth, or for refusing to sign or subscribe his examination, or for refusing to produce, or for not producing any such book, paper, deed, writing, or document, as is hereby provided as to persons summoned after the adjudication of bankruptcy; and the commissioners, upon proof made before them of the petitioning creditor's debt or debts, and of the trading, and act of bankruptcy, shall thereupon adjudge such person or persons bankrupt. § 24.

The commissioners, after they have so adjudged, shall forthwith cause notice to be given in the London Gazette, and shall appoint three public meetings for the bankrupt to surrender and conform; the last of which meetings shall be on the forty-second day hereby limited for such surrender. § 25.

No commission shall abate by reason of a demise of the crown; and (if by the death of the commissioners, or for any other cause,



it become necessary) any commission may be renewed, but only half the fees usually paid upon obtaining commissions shall be paid for the same; and if any bankrupt shall die after adjudication, the commissioners may proceed in the commission as they might have done if he were living. § 26.

Any person appointed by the commissioners, by their warrant, may break open any house, chamber, shop, warehouse, door, trunk, or chest of any bankrupt, where himself or any of his property shall be reputed to be, and may seize upon the body or property of such bankrupt; and if the bankrupt be in prison or in custody, the person so appointed may seize any property (his necessary wearing apparel only excepted) in the custody or possession of such bankrupt, or of any other person, in any prison. § 27.

And the person so appointed may break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in Ireland, where any of the property shall be reputed to be, and seize the same: provided, such warrant shall have been verified upon oath, by the attorney or solicitor suing out the commission, before the mayor or other chief magistrate of the city, borough, or town corporate, where or near to which the commission is executed, and verified under the common seal thereof, or the seal of the office of such mayor or other magistrate; and provided also that the person thereby appointed shall, before a justice of peace, depose upon oath that he is the person named in such warrant. § 28.

In all cases where it shall be made to appear to the satisfaction of any justice of peace in England or Ireland, that there is reason to suspect and believe that property of the bankrupt is concealed in any house, premises, or other place not belonging to such bankrupt; such justice of peace is authorized to grant a search warrant to the person so deputed, who may execute the same in like manner, and shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen and concealed. § 29.

And if, in the execution of such warrant, it shall be necessary to have access to any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, in Scotland, where any of the property shall be reputed to be, or to seize and get possession of such property, such warrant, after having been verified upon oath, may be backed or indorsed with the name of a judge ordinary or justice of the peace in Scotland; and such warrant so indorsed shall be sufficient authority to the person, and to all officers of the law in Scotland, to execute the same within the county or burgh wherein it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, and to seize and take possession thereof, to be distributed under the said commission, or otherwise dealt with according to law. § 30.

No action shall be brought against any person so appointed by

the commissioners for any thing done in obedience to their warrant, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such person, by the party intending to bring such action, or by his attorney or agent, in writing, signed and demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if, after such demand and compliance therewith, any action be brought against the person so appointed, without making the petitioning creditor or creditors defendant or defendants, if living, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the commissioners; and if such action be brought against the petitioning creditor or creditors, and the person so appointed as aforesaid, the jury shall, on proof of such warrant, give their verdict for the person so appointed, notwithstanding any such defect of jurisdiction; and if the verdict shall be given against the petitioning creditor or creditors, the plaintiff shall recover costs against him or them, to be taxed so as to include such costs as the plaintiff is liable to pay to the person so appointed as aforesaid. § 31.

In any action so brought against the petitioning creditor or creditors, either alone or jointly with the person so appointed, for any thing done in obedience to their warrant, proof by the plaintiff in such action that the defendant or defendants, or any of them, are petitioning creditors, shall be sufficient for the purpose of making them liable, in the same manner and to the same extent as if the act complained of in such action had been done or committed by them. § 32.

After adjudication, the commissioners may summon before them any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to him; and also any person whom they believe capable of giving information concerning any part of the bankrupt's estate, or any fictitious debt, or any spurious book or document, or other transactions material to the full disclosure of the dealings of the bankrupt; and may also require such person to produce any books, papers, deeds, and writings, and other document in his custody or power, which may appear necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which they are authorized to inquire into; and if such person so summoned shall not come at the time appointed, having no lawful impediment, the commissioners may, by warrant under their hands and seals, apprehend and arrest such person, and have him brought before them to be examined as aforesaid. § 33.

And upon the appearance of any person so summoned, or if any person be present at any meeting of the commissioners, it shall be lawful to examine every such person either by word of mouth or by interrogatories in writing, and to reduce into writing the answers, and the party examined is required to sign and subscribe to them; and if any person shall refuse to be sworn, or



being a Quaker, to make solemn affirmation, or shall refuse to answer any lawful questions put by the said commissioners, or shall not fully answer to their satisfaction, or shall refuse to sign and subscribe to the examination (not having any objection allowed by the commissioners), or shall not produce any books, papers, deeds, and writings, and other documents, in his custody or power, which such person was required to produce, and to the production of which the party shall not state any objection allowed by the commissioners, it shall be lawful for them, by warrant under their hands and seals, to commit such person to such prison as they shall think fit, there to remain without bail until he shall submit to be sworn or make affirmation as aforesaid, and full answers make to all such lawful questions, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents as aforesaid. § 34.

Where any witness is summoned to attend before the commissioners at any meeting prior to the adjudication, the necessary expences shall be tendered to every such witness, in like manner as is now by law required upon service of a subpoena to a witness in any action at law; and where any witness is summoned to attend at any other meeting, every such witness shall have such costs and charges as the commissioners shall think fit. § 35.

The commissioners may, by writing under their hands, summon any bankrupt before them, whether such bankrupt shall have obtained his certificate or not; and in case he shall not come at the time by them appointed, having no lawful impediment, the commissioners may, by warrant under their hands and seals, authorize any person or persons they shall think fit to arrest him, and bring him before them; and upon the appearance of such bankrupt, it shall be lawful for them to examine him upon oath, touching all matters relating either to his trade, dealings, or estate, and to reduce his answers into writing, which he shall sign and subscribe; and if he shall refuse to be sworn, or to answer any questions put to him touching any of the matters aforesaid, or to sign and subscribe his examination, (not having an objection allowed by the commissioners), they may, by warrant under their hands and seals, commit him to prison, there to remain without bail until he shall submit himself to be sworn, and full answer make to such questions as shall be put to him, and sign his examination. § 36.

The commissioners may summon before them the wife of any bankrupt, and examine her as to his estate and effects; and she shall incur such danger or penalty for not coming, or for refusing to be sworn and examined, or to sign or subscribe her examination, or for not disclosing the truth, as is provided against other persons. § 37.

And if any gaoler, to whose custody any bankrupt or other person shall be committed, shall suffer such bankrupt or other person to escape, he shall forfeit 500*l.*; and every such gaoler shall, upon the request of any creditor who shall have proved

under the commission, and who shall produce a certificate thereof under the hands of the commissioners (which they shall give *gratis*), forthwith produce any person so committed, under the penalty of 100*l.* § 38.

If any person be committed by the commissioners for refusing to answer, or not fully answering any question put to him, they shall, in their warrant of commitment, specify every such question: provided, that if any person committed shall bring any *habeas corpus* in order to be discharged, and there shall appear on the return of the writ any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, the court or judge before whom such party shall be brought by *habeas corpus*, shall re-commit such person to the same prison, there to remain until he shall conform, unless it shall be shewn to such court by the party, that he has fully answered all lawful questions put to him by the commissioners, or, if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such court that he had a sufficient reason for the same: provided also, that such court shall, if required thereto by the party committed, inspect and consider the whole of the examination, and if it shall appear that the answer or answers of the party committed is or are satisfactory, such court may order the party to be discharged. § 39.

And in every action, in respect of any such commitment brought by any bankrupt or other person, the court before whom such action is tried shall, if thereto required by the defendant, in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of such examination; and if it shall appear to such court that the party was lawfully committed, the defendant shall have the same benefit therefrom as if the whole of such examination had been therein stated. § 40.

No writ shall be sued out against, nor copy of any process served on any commissioner, for any thing by him done, unless notice in writing shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party intending to sue or cause the same to be sued out or served, at least one calendar month; and such notice shall set forth the cause of action; and on the back shall be indorsed the name of the attorney or agent, together with the place of his abode, who shall receive no more than 20*s.* for preparing and serving such notice. § 41.

And no such plaintiff shall recover any verdict against such commissioner in any case where the action shall be grounded on any act of the defendant as commissioner, unless it is proved upon the trial that such notice was given as aforesaid, but in default thereof such commissioner shall recover a verdict and costs as aforesaid; and no evidence shall be permitted to be given by the plaintiff of any cause of action, except such as is contained in the notice. § 42.



And every such commissioner may, at any time within one calendar month after such notice, tender amends to the party complaining, or to his agent or attorney; and if the same is not accepted, may plead such tender in bar to any action grounded on such writ or process, together with the plea of Not Guilty, and any other plea with leave of the court; and if, upon issue joined, the jury shall find the amends to have been sufficient, they shall give a verdict for the defendant; and if the plaintiff shall become nonsuit, or shall discontinue his action, or if judgment shall be given for such defendant upon demurrer, he shall be entitled to the like costs as if he had pleaded the general issue only; and if upon issue joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, together with costs of suit; provided, that if any such commissioner shall neglect to tender any amends, or shall have tendered insufficient before the action, he may, by leave of the court, at any time before issued joined, pay such sum of money as he shall think fit, whereupon such proceedings shall be had, as in other actions where the defendant is allowed to pay money into court. § 43.

And every action brought against any person, for any thing done in pursuance of this act, shall be commenced within three calendar months after the fact committed; and the defendant may plead the general issue, and give this act and the special matter in evidence, and that the same was done by authority of this act: and if it shall appear so to have been done, or that such action was commenced after the time before limited for bringing the same, or brought in any other county than as aforesaid, the jury shall find for the defendant; and if there be a verdict for the defendant, or if the plaintiff shall be nonsuited or discontinue his action, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall recover double costs. § 44.

The commissioners may by writing under their hands appoint one or more person or persons as assignees of the bankrupt's real and personal estate, or of any part thereof, until the choice of assignees by the creditors; which latter shall divest such estate out of the assignee or assignees appointed by the commissioners; and every assignee so appointed by the commissioners shall deliver up all the estate of the bankrupt to the assignees so chosen as hereinafter mentioned; and if such first assignee or assignees shall not, within ten days after notice of the said choice of assignees, and of their consent to accept such assignment, signified to them by writing under their hands, make such delivery as aforesaid, every such first assignee shall forfeit 200*l.* § 45.

At the three several meetings appointed by the commissioners, and at every other meeting appointed for proof of debts, whereof ten days notice shall have been given in the *London Gazette*, every creditor may prove his debt by his own oath; and all bodies corporate and public companies may prove by an agent; and if

any creditor shall live remote from the place of meeting, he may prove by affidavit sworn before a master in chancery, ordinary or extraordinary, or if he shall live out of England, by affidavit sworn before a magistrate where he shall be residing, and attested by a notary public; and no creditor shall pay any contribution on account of any such debt: provided, that it shall be lawful for the commissioners to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt, or to require such further proof, and examine such other persons in relation thereto, as they shall think fit. § 46.

Every person with whom any bankrupt shall have really and *bona fide* contracted any debt or demand before the issuing the commission, shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, and be a creditor under such commission; provided, such person had not, at the time the same was contracted, notice (either actual or constructive) of any act of bankruptcy by such bankrupt committed, or that he had stopped payment. § 47.

Where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the commissioners shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy before the credit given to or the debt contracted; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively: and every debt or demand hereby made proveable against the estate of the bankrupt may also be set off in manner aforesaid against such estate: provided that, where there has been such prior act of bankruptcy, such credit was given to the bankrupt two calendar months before the date and suing forth of the commission; and that the person claiming the benefit of such set-off had not, when such credit was given, any notice either actual or constructive of an act of bankruptcy, or that the bankrupt had stopped payment. § 48.

Any person who shall have given credit to the bankrupt upon valuable consideration, for any money which shall not have become payable when he committed an act of bankruptcy, may prove such debt as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent. to be computed from the declaration of a dividend, to the time such debt would have become payable, according to the terms upon which it was contracted. § 49.

And any person who at the issuing the commission shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, may, if he shall have paid the debt, or any part thereof in discharge of the whole debt, (although he may have paid the same after the commission issued) if the creditor shall have proved his debt under the com-



mission, stand in the place of such creditor as to the dividends upon such proof; or if the creditor shall not have proved under the commission, may prove his demand as a debt, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, bail, or liable as aforesaid, after an act of bankruptcy committed; provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice either actual or constructive of any act of bankruptcy by such bankrupt, or that he had stopped payment. § 50.

The obligee in any bottomry or respondentia bond, and the assured in any policy of insurance, shall be admitted to claim; and after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors, as if the loss or contingency had happened before the issuing the commission against such obligor or insurer; and the person effecting any policy of insurance upon ships or goods with any person as a subscriber or underwriter becoming bankrupt, may prove any loss to which such bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person or persons so interested is not or are not within the United Realm. § 51.

And any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, may prove for the value of such annuity; which value the commissioners shall ascertain, with reference to the original price given, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the commission. § 52.

And it shall not be lawful for any person entitled to annuity granted by any bankrupt to sue any person who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission for the value of such annuity, and for the arrears thereof; and if such surety, after such proof, pay the amount, he shall thereby be discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved, he may be sued for the accruing payments, until such annuitant shall have been paid or satisfied the amount, with interest thereon at the rate of four per cent. per ann. from the time of notice of such proof, and of the amount thereof, being given; and after such payment, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount paid or satisfied; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant or of such surety: provided, that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission.

before such surety shall have fully paid or satisfied the amount so proved as aforesaid. § 53.

If any bankrupt shall, before the issuing of the commission, have contracted any debt payable upon a contingency which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the commissioners to set a value upon such debt, and to admit such person to prove the amount so ascertained, and to receive dividends thereon, or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividend with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice either actual or constructive of any act of bankruptcy by such bankrupt, or that he was insolvent, or had stopped payment. § 54.

In all future commissions against any person or persons liable upon any bill of exchange or promissory note, whereupon interest is not reserved, overdue at the issuing the commission, the holder of such bill of exchange or promissory note may prove for interest upon the same, to be calculated by the commissioners to the date of the commission, at such rate as is allowed by the Court of King's Bench in actions upon such bills or notes. § 55.

And it is enacted, that if any plaintiff in any action at law, or suit in equity, or petitioner in bankruptcy or lunacy, shall have obtained any judgment, decree, or order against any person who shall thereafter become bankrupt, for any debt or demand in respect of which such plaintiff or petitioner shall prove under the commission, he may also prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the bankrupt. § 56.

No creditor who has brought any action or suit against any bankrupt, in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action or suit; and the proving or claiming a debt under a commission shall be deemed an election to take the benefit of such commission with respect to the debt so proved or claimed: provided, that such creditor shall not be liable to the payment to such bankrupt or his assignees of the costs of such action or suit so relinquished by him, and that where any such creditor shall have brought any action or suit against such bankrupt jointly with any other person or persons, his relinquishing such action or suit against the bankrupt shall not affect such action or suit against such other person or persons: provided, that any creditor who shall have so elected to prove or claim as aforesaid, if the commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant *de novo*,



if he has not put in bail below, or perfected bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail by requiring the bail below to put in and perfect bail above, within the first eight days in term after notice in the London Gazette of the superseding such commission, and by suing the bail upon their recognizance, if the condition thereof is broken. § 57.

And whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of 20*l.* or upwards, that any debt proved under the commission is not justly due, either in whole or in part, such assignees or creditors may make representation thereof to the commissioners, who may summon before them and examine upon oath any person who shall have so proved as aforesaid, together with any person whose evidence may appear to be material either in support of or in opposition to any such debt; and if the commissioners, upon the evidence given on both sides, or (if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced, shall be of opinion that such debt is not due either wholly or in part, they may expunge the same, either wholly or in part, from the proceedings: provided, that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking to be filed with the proceedings, to pay such costs as the commissioners shall adjudge, to the creditor who has proved such debt; such costs to be recovered by petition: provided also, that such assignees or creditors may apply, in the first instance, by petition to the lord chancellor, or that either party may petition against the determination of the commissioners. § 58.

#### *Of the Assignees.*

And at the second meeting appointed by the commissioners, assignees of the bankrupt's estate and effects shall be chosen; and all creditors who have proved debts to the amount of 10*l.* and upwards, and joint creditors of two or more persons being partners, who have proved debts to such amount in any commission against one or more of such partners, may vote in such choice; and also any person authorized by letter of attorney from any creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a master in chancery, ordinary or extraordinary, or by oath before the commissioners, and in case of creditors residing out of England, by oath before a magistrate where the party shall be residing, duly attested by a notary public. § 59.

The commissioners shall have power to reject any person so chosen, who shall appear to them for any reason unfit for the office of assignee. § 60.

And upon such choice being made, a certificate or declaration shall be signed by the commissioners, and such certificate or

declaration shall immediately vest the whole of such bankrupt's real or personal estate, both within the United Kingdom and abroad, except copyhold and customary lands, and all such estate as aforesaid which he may purchase, or which may revert, descend, be devised, or come to him before he shall have obtained his certificate of confirmity, and all debts due or to be due to the bankrupt, in such assignee or assignees, for the benefit of the creditors who shall have proved under the commission, as fully and with the same rights and powers, both of alienating or recovering the same, as such bankrupt possessed: provided that such certificate or declaration of the choice of assignees be entered of record, within two months from the signature thereof, in the office of the register of proceedings in bankruptcy. § 61.

The lord chancellor may, upon petition, direct the removal of any assignee, and the creditors shall thereupon proceed in manner aforesaid to the choice of a new assignee, and the certificate or declaration of such choice of a new assignee, signed by the commissioners as aforesaid, shall vest the whole of such bankrupt's real and personal estate in such new assignee, either solely or jointly with any assignee or assignees who shall not have been removed; provided that the order for the removal of such assignee, and the certificate or declaration of the choice of a new assignee or assignees as aforesaid, be both entered of record in manner aforesaid. § 62.

Whenever a new assignee or assignees shall be chosen, no action at law or suit in equity shall be thereby abated; but the court may, upon the suggestion of such removal and new choice, allow the name of such new assignee or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the new assignee or assignees, in the same manner as if he or they had originally commenced the same. § 63.

Assignees may, by deed indented and enrolled in any of his majesty's courts of record, make sale for the benefit of the creditors of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby entitle or authorize any person or persons on their behalf to surrender the same, at any court at which the same may be lawfully surrendered, for the purpose of any purchaser or purchasers being admitted thereto. § 64.

Every person to whom any sale of copyhold or customary lands or tenements shall be made by the assignees, shall, before he enter, agree and compound with the lords of the manors of whom the same shall be holden, for such fines, dues, and other services as theretofore have been usually paid for the same; and thereupon the said lords shall, at the next or any subsequent court, grant unto such vendee, upon request, the said copy or customary lands or tenements, for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs, and services, and shall admit him tenant of the same. § 65.



Assignees may, by deed indented and enrolled as aforesaid, make sale, for the benefit of the creditors, of any hereditaments situated in England or Ireland, whereof the bankrupt is seised of any estate tail in possession, reversion, or remainder; and every such deed shall be good against the bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and against all persons whom the said bankrupt, by fine, common recovery, or other means, might cut off or debar from any remainder, reversion, or other interest in or out of any of the said hereditaments. § 66.

And if any bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time for the performance of such condition, make tender or payment of money, or other performance, according to such condition, as fully as the bankrupt might have done; and after such tender, payment, or performance, may sell and dispose of such real or personal estate. § 67.

All sales, either of the real or personal estate of bankrupts, or of such debts as aforesaid, shall be free from auction duty. § 68.

If any real or personal estate or debts of any bankrupt be extended after he shall have become bankrupt, by any person under pretence of his being an accountant of or debtor to the king, the commissioners may examine upon oath whether the said debt was due upon any contract originally made between such accountant and the bankrupt; and if such contract was originally made with any other person than the said debtor or accountant, or in trust for any other person or persons, the commissioners may sell and dispose of such real and personal estate or debts for the benefit of the creditors; and such sale shall be valid against the said extent, and all persons claiming under it. § 69.

And if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the commissioners may sell and dispose of the same for the benefit of the creditors: provided, that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment duly registered according to the provisions of the 4 Geo. IV. c. 41. intituled, "*An act for the registering of vessels.*" § 70.

If any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, officers' fees, annuities, leases, goods, or chattels, or have delivered or made

over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the commissioners may sell and dispose of the same. § 71.

When any distress for rent shall be made and levied upon the goods or effects of any person becoming bankrupt, whether before or after the issuing of a commission (an act of bankruptcy having been previously committed), if there shall be two years rent or upwards due to the landlord or party making the distress, such distress shall not be in any manner available for more than two years rent accruing prior to the date of the commission; but the landlord or party to whom the rent shall be due, shall be allowed to come in as a creditor under a commission for the overplus of the rent due, and for which the distress shall not be available. § 72.

Any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained; and if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor, or such person agreeing to grant a lease, within fourteen days after he shall have notice the assignees shall have declined as aforesaid; and if the assignees shall not, upon being thereto required, elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, may apply by petition to the lord chancellor, who may order them so to elect, and to deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises; or may make such other order therein as he shall think fit. § 73.

If any bankrupt shall have entered into any agreement for the purchase of any estate in land, the vendor thereof, or any person claiming under him, if the assignees of such bankrupt shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, may apply by petition to the lord chancellor, who may thereupon order them so to elect, and if they shall elect to abandon the same, may order them to deliver up the said agreement and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as he shall think fit. § 74.

All powers vested in any bankrupt, which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice), may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same. § 75.

The lord chancellor may, upon the petition of the assignees or any purchaser from them of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if



there shall have been a verdict at law establishing its validity, order the bankrupt to join in any conveyance of such estate or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt, and all persons claiming under him, shall be estopped from objecting to the validity of such conveyance; and all estate, right, or title which such bankrupt had therein, shall be as effectually barred by such order, as if such conveyance had been executed by him. § 76.

If any bankrupt shall have standing in his name as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any company within the United Realm, the lord chancellor may, on the petition of the person or persons entitled in possession to the receipt of the dividends thereof, on due notice given to all other persons (if any) interested therein, order the assignees, and all persons whose act or consent thereto is necessary, to transfer the said stock, funds, or annuities to such person or persons as the lord chancellor shall think fit, upon the same trusts as the said stock, funds, or annuities were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the dividends thereof as the lord chancellor shall direct; and if any such bankrupt shall have any such stock, funds, or annuities standing in his name as aforesaid, in his own right, the commissioners may, by writing under their hands, order all persons whose act or consent is thereto necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees. § 77.

All conveyances by, all payments by, and all contracts and other dealings and transactions by and with any bankrupt, *bona fide* made and entered into more than two calendar months before the date and issuing of the commission against him; and all executions, attachments, and distresses for rent against the lands and tenements or goods and chattels of such bankrupt, *bona fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid, notwithstanding any prior act of bankruptcy by him committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution, attachment, or distress shall have issued or been levied, had not, at the time of such conveyance, payment, contract, dealing, or transaction, or at the time of executing or levying such execution, attachment, or distress, notice, either actual or constructive, of any prior act of bankruptcy by him committed, or that he had stopped payment: provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission within two calendar months next after it shall have been superseded, no such conveyance, payment, contract, dealing, or transaction, execution, attachment, or distress, shall be valid, unless made, entered into, executed, or levied more than two calendar months before the issuing of the first commission. § 78.

No person really and *bona fide* a creditor of any bankrupt shall be liable to repay to the assignees any money which before the issuing of the commission was really and *bona fide* received by such person of the bankrupt; provided such person had not at the time of receiving the same such notice as aforesaid. § 79.

The issuing of a commission shall be deemed notice of a prior act of bankruptcy (if an act of bankruptcy has been actually committed before the issuing the commission) if the adjudication of the person or persons against whom such commission has issued shall have been notified in the London Gazette, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same. § 80.

No person or company having in his or their possession or custody any personal estate belonging to any bankrupt, nor any person indebted to such bankrupt, shall be endangered by reason of the delivery of any such personal estate, or the payment of any such debt to the bankrupt or his order; provided such person or company had not, at the time of such delivery or payment, actual notice that such bankrupt had committed an act of bankruptcy, or had stopped payment. § 81.

And if any accredited agent of any body corporate, or public company, shall have had notice, either actual or constructive, of any act of bankruptcy or stoppage of payment, such body corporate or company shall be thereby deemed to have had such notice. § 82.

No title to any real or personal estate sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same, within twelve calendar months from the issuing thereof. § 83.

The assignees, with the consent of the major part in value of creditors, who shall have proved under the commission, present at any meeting, whereof and of the purport whereof twenty-one days notice shall have been given in the London Gazette, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or may give time or take security for the payment of such debt; or may submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators, to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute: and the award shall be binding on all the creditors; and the assignees are hereby indemnified for what they shall do according to the directions aforesaid; and no suit in equity shall be commenced by the assignees without such consent as aforesaid: provided, that if no creditor (except the assignees) shall attend at any such meeting, whereof



such notice shall have been given as aforesaid, the assignees shall have power, with the consent of the commissioners testified in writing under their hands, to do any of the matters aforesaid, and the same shall be binding on all the creditors. § 84.

In any commission against any one or more member or members of a firm, the lord chancellor may, upon petition, authorize the assignees to commence or prosecute any action at law or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and may obtain such judgment, decree, or order therein, as if such action or suit had been instituted with the consent of such partner or partners; and if such partner or partners shall execute any release of the debt or demand for which such action or suit is instituted, such release shall be void: provided, that every such partner, if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit, and that the lord chancellor may, upon the petition of such partner, direct that he may receive so much of the proceeds of such action or suit as the lord chancellor shall think fit. § 85.

In any action by or against any assignee, or in any action against any commissioner or person acting under the warrant of the commissioners, for any thing done as such commissioner, or under such warrant, no proof shall be required at the trial of the petitioning creditor's debt or debts, or of the trading, or act or acts of bankruptcy respectively, unless the other party in such action shall, if defendant, at or before pleading, and, if plaintiff, before issue joined, give notice in writing to such assignee, commissioner, or other person, that he intends to dispute some and which of such matters; and where such notice shall have been given, if such assignee, commissioner, or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may, if he thinks fit, grant a certificate of such proof or admission; and such assignee, commissioner, or other person shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice; and such costs shall, if such assignee, commissioner, or other person shall obtain a verdict, be added to the costs; and if the other party shall obtain a verdict, shall be deducted from the costs, which such other party would otherwise be entitled to receive from such assignee, commissioner, or other person. § 86.

And in all suits in equity by or against the assignees, no proof shall be required at the trial of the petitioning creditor's debt or debts, or of the trading, or act or acts of bankruptcy respectively, as against any the parties in such suit, except such parties as shall, within ten days after rejoinder, give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice to be taxed by the proper officer shall, if

the court see fit, be paid by the party or parties so giving such notice as aforesaid, and the service of such notice may be proved by affidavit upon the hearing of the cause. § 87.

If the bankrupt shall not, if he was within the United Kingdom at the issuing of the commission, within two calendar months after the adjudication, or (if he was out of the United Kingdom) within two calendar months after his return, have given notice of his intention to dispute the commission, and have proceeded therein with due diligence, the depositions taken before the commissioners at the time of or previous to the adjudication of the petitioning creditor's debt or debts, and of the trading and act of bankruptcy, shall be conclusive evidence of the matters therein respectively contained, in all actions at law or suits in equity brought by the assignees for any debt or demand for which the bankrupt might have sustained any action or suit. § 88.

And if the assignees commence any action or suit for any money before the time allowed as aforesaid for him to dispute the commission shall have elapsed, any defendant in any such action or suit may, after notice given to the assignees, pay the same or any part thereof into the court; and all proceedings shall thereupon be stayed, and after the time aforesaid shall have elapsed, the assignees shall have the same paid to them out of court. § 89.

All persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the commission be afterwards superseded, from all demands which may thereafter be made in respect of the same by the person or persons against whom such commission issued, and all persons claiming under him or them; and all persons who shall, without action or suit, *bona fide* deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person or persons as aforesaid in respect of the same, or any person claiming under him or them; provided such notice to try the validity of the commission had not been given and been proceeded in within the time and in manner aforesaid. § 90.

And all things done pursuant to the 5 Geo. II. and hereby repealed, whereby it was enacted that the lord chancellor should appoint a place where all matters relating to commissions of bankruptcy should be entered of record, and should appoint a person to have the custody thereof, be hereby confirmed; and the lord chancellor may from time to time, by writing under his hand, appoint a proper person, who shall by himself, or his deputy, to be approved by the said lord chancellor, enter of record all matters relating to commissions, and have the custody of the entries thereof; and the person so to be appointed, and his deputy, shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by order in writing under the hand of the lord chancellor, on sufficient cause therein specified. § 91.

In all commissions to be issued after the passing of this act,



no commission of bankruptcy, adjudication of bankruptcy by the commissioners, certificate or declaration of choice of assignees, or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid; and the person so appointed to enter matters of record as aforesaid shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, and certificate or declaration of choice of assignees, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of 5*s.* each; and for the entry of every certificate of conformity, having the like certificate indorsed thereon, 2*s.* 6*d.*; and every such instrument shall be so entered of record upon the application of or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the lord chancellor may, upon petition, direct any depositions, proceedings, or other matter relating to commissions of bankruptcy, to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the lord chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid: provided, that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid. § 92.

And in every action, suit, or issue, office copies of any original instrument or writing filed in the office, or officially in the possession of the lord chancellor's secretary of bankrupts, shall be evidence to be received of every such original instrument or writing respectively; and if any such original instrument or writing shall be produced on any trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary. § 93.

And any bankrupt or other person who shall, in any examination before the commissioners, or in any affidavit or deposition authorized or directed by the present or any act hereby repealed, wilfully and corruptly swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury: and where any oath is hereby directed to be taken or administered, or affidavit to be made, by or to any party, such party, if a Quaker, shall or may make solemn affirmation; and all Quakers who shall in any case knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury. § 94.

All sums of money forfeited under this act, or by virtue of any

conviction for perjury, may be sued for by the assignees in any of his majesty's courts of record; and the money so recovered, the charges of suit being deducted, shall be divided among the creditors; and if the creditors shall have been fully paid, one moiety of the surplus shall be paid to the king, and the other to the poor of the parish where the bankrupt resided. § 95.

Assignees shall keep an account, wherein they shall enter all property of the bankrupt received by them, and all payments made on account of the bankrupt's estate; which account every creditor who shall have proved may inspect at all reasonable times; and the commissioners may at all times summon the assignees before them, and to require them to produce all books, papers, deeds, writings, and other documents relating to the bankruptcy in their possession; and if they shall not come at the time appointed, having no impediment made known to the commissioners, and allowed by them, they may, by warrant under their hands and seals, cause such assignees to be arrested and brought before them, and upon their refusing to produce such books, deeds, writings, papers, or documents as aforesaid, they may commit the party so refusing to prison, there to remain without bail, until they shall submit themselves to the commissioners. § 96.

At the meeting of creditors for the choice of assignees, the major part in value may direct how and with whom and where the money received from time to time out of the estate shall be paid in and remain until it be divided; and if the creditors shall not make such direction, the commissioners shall, immediately after such choice, make such direction; but no money shall be directed to be paid into the hands of any of the commissioners, or of the solicitor to the commission, or into any banking house or other house in which any such commissioner, assignee, or solicitor is interested. § 97.

The commissioners may, as often as it shall appear expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of exchequer bills, for the benefit of the creditors, and may direct where and with whom such exchequer bills shall be kept, and cause such exchequer bills to be sold, and may direct the proceeds to be again laid out in exchequer bills, or to be applied for the benefit of the creditors, subject to the control of the lord chancellor. § 98.

If any assignee shall retain in his hands, or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ any sum to the amount of 100*l.* or upwards, part of the estate of the bankrupt, or shall neglect to invest any money in the purchase of exchequer bills when so directed as aforesaid, every such assignee shall be liable to be charged in his accounts with such sum as shall be equal to interest at the rate of twenty per cent. on all such money for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed as aforesaid, or during which he shall have



so neglected to invest the same in the purchase of exchequer bills ; and the commissioners may charge every such assignee in his accounts accordingly. § 99.

And if any assignee, indebted to the estate of which he is such assignee in respect of money so retained or employed by him as aforesaid, become bankrupt, if he shall obtain his certificate, it shall only have the effect of freeing his person from arrest and imprisonment ; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children, excepted), shall remain liable for so much of his debts to the estate of which he was assignee, as shall not be paid by dividends under his commission, together with lawful interest for the whole debt. § 100.

The commissioners shall, at the meeting appointed for the last examination of the bankrupt, appoint a public meeting, not sooner than four, nor later than six calendar months therefrom, whereof, and of the purport whereof, they shall give twenty-one days notice in the London Gazette, to audit the account of the assignees ; and the assignees at such meeting shall deliver upon oath a true statement in writing of all money received by them respectively, and when and on what account, and how the same has been employed ; and the commissioners shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained ; and the said assignees may be examined upon oath by the said commissioners touching the truth of such accounts : and in such accounts the said assignees shall be allowed to retain all such money as they shall have expended in suing out and prosecuting such commission, and all other just allowances. § 101.

The assignees shall, not sooner than four nor later than twelve calendar months from the issuing the commission, appoint a public meeting (whereof, and of the purport whereof, they shall give twenty-one days notice in the London Gazette), to make a dividend of the bankrupt's estate, at which meeting all creditors who have not proved their debts may prove the same ; and the said commissioners at such meeting shall order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such creditors as have proved their debts under the commission, in proportion to their respective debts ; and shall make an order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver another part thereof to the assignees ; which order shall contain an account of the time and place of making it, of the amount of the debts proved, of the money remaining in the hands of the assignees to be divided, of how much in the pound is then ordered to be paid to every creditor, and of the money allowed by the commissioners to be retained by the assignees

with their reasons for allowing the same to be so retained; and the assignees, in pursuance of such order, (and without any deed of distribution made for that purpose) shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose from each creditor, for the dividend received by such creditor, and such order and receipt shall be a discharge to every such assignee for so much as he shall pay pursuant to such order; and no dividend shall be declared unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath. § 102.

No creditor having security for his debt, or having made any attachment in London, or any other place by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon, or any mortgage of or lien upon any part of the property of such bankrupt before the bankruptcy. § 103.

In all commissions against one or more of the partners of a firm (except in commissions against one of several partners issued previous to this act), where the debt of the petitioning creditor is a joint debt of the bankrupt or bankrupts and any other person or persons, such petitioning creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts, until all the separate creditors shall have received the full amount of their respective debts. § 104.

If the bankrupt's estate shall not have been wholly divided upon the first dividend, the assignees shall, within eighteen calendar months after the issuing of the commission, appoint a public meeting, (whereof, and of the purport whereof, they shall give twenty-one days notice in the London Gazette), to make a second dividend, when all creditors who have not proved their debts may prove the same; and the commissioners at such meeting, after taking such audit as hereinbefore directed, shall order the balance in the hands of the assignees to be forthwith divided amongst such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees; in which case they shall, as soon as may be, convert such estate and effects into money, and within two calendar months after the same shall be so converted, divide the same in manner aforesaid. § 105.

If any assignee under any commission of bankrupt shall have, either in his own hands or at any banker's, or otherwise subject to his order or disposition, or to his knowledge in the hands of or in the order and disposition of himself and any co-assignee or assignees, any or either of them, any unclaimed dividend or dividends amounting in the whole to the sum of 50*l.* and shall not, within six months after the passing of this act, or two calendar



months after the expiration of one year after the declaration and order of payment of such dividend or dividends made by the commissioners, either pay to the creditor or creditors entitled thereto, or cause a certificate thereof to be filed in the office of the lord chancellor's secretary of bankrupts, such assignee or assignees shall be charged, in account with the estate of the bankrupt, interest upon such unclaimed dividend or dividends, to be computed from the time that such certificate is hereby directed to be filed, at the rate of 5*l.* per centum per annum for such time as he shall thenceforth retain the same, and also such further sum as the commissioners shall think fit, not exceeding in the whole 20*l.* per centum per annum; and the commissioners may order the investment of any unclaimed dividends in the public funds, or in any government security, for or on account of the creditors entitled, and subject to such order as the lord chancellor may think fit to make respecting the same, who, if he shall think fit, may, after the same shall have remained unclaimed for the space of three years from the declaration of such dividends by the commissioners, order the same to be divided amongst and paid to the other creditors; and the proof of the creditors to whom such dividends were allotted shall from thenceforth be considered as void as to the same, but renewable as to any future dividends to place them *pari passu* with the other creditors, but not to disturb any dividends which shall have been previously made. § 106.

No action for any dividend shall be brought against the assignees by any creditor; but if the assignees shall refuse to pay any such dividend, the lord chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application. § 107.

#### *Of the Bankrupt.*

If any bankrupt shall not, before three o'clock in the afternoon of the forty-second day after he shall have been declared bankrupt, notice thereof in writing having been first left at his usual place of abode, or served upon him in case he was in prison, and notice given in the London Gazette of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign and subscribe such surrender, and submit to be examined before them from time to time upon oath, or being a Quaker upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how, and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto, except such part as shall have been really and *bona fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expence of his family; or if any such bankrupt shall not upon such examination deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power (except the necessary wearing

apparel of himself, his wife and children); or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of 10*l.* or any books of account, papers, or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge; or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years. § 108.

And the lord chancellor may, as often as he shall think fit, from time to time enlarge the time for the bankrupt surrendering himself, for such time as the lord chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself. § 109.

And the commissioners before the choice of assignees, and after such choice the assignees, with the approbation of the commissioners, testified in writing under their hands, may from time to time make such allowance to the bankrupt, out of his estate, until he shall have passed his last examination, as the said assignees shall think necessary for the support of himself and his family. § 110.

And if any bankrupt apprehended by any warrant of the commissioners shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered. § 111.

The bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath, before a master ordinary or extraordinary in chancery, or justice of the peace, all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every bankrupt not in prison or custody, shall at all times after such surrender attend such assignees upon every reasonable notice in writing for that purpose given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may, at all reasonable times before the expiration of the said forty-two days, or such further time as shall be allowed to him to finish his examination, inspect his books, papers, and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him; and after he shall have obtained his certificate, shall, upon demand in writing given to him, or left at his usual place of abode, attend the assignees, to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate; for which attendance he shall be paid 5*s.* per day by the assignees out of his estate; and if such bankrupt shall, after such



demand as aforesaid, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause shewn to the commissioners for such refusal, and by them allowed, the assignees making proof thereof upon oath before the commissioners, the said commissioners may, by warrant directed to such person as they shall think proper, cause such bankrupt to be apprehended, and committed to the county gaol, there to remain until he shall conform to the satisfaction of the said commissioners, or of the lord chancellor. § 112.

The bankrupt shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the said forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender; and if such bankrupt shall be arrested for debt, or on any escape warrant, in coming to surrender, or shall after his surrender be so arrested within the time aforesaid, he shall, on producing the summons under the hands of the commissioners to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shewn such summons to him, so signed as aforesaid, such officer shall forfeit to such bankrupt, for his own use, the sum of 5*l.* for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at Westminster, in the name of such bankrupt, with full costs of suit. § 113.

The commissioners may, at the time appointed for the last examination of the bankrupt, or any enlargement or adjournment thereof, adjourn such examination *sine die*; and he shall be free from arrest or imprisonment for such time not exceeding three calendar months, as they shall, by indorsement upon such summons as aforesaid, appoint, with like penalty upon any officer detaining such bankrupt after having been shewn such summons. § 114.

Whenever any bankrupt is in prison or in custody, under any process, attachment, execution, commitment, or sentence, the commissioners may, by warrant under their hands directed to the person in whose custody such bankrupt is confined, cause such bankrupt to be brought before them at any meeting either public or private; and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expence thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the commissioners for bringing up such bankrupt; provided that the assignees may appoint any persons to attend such bankrupt from time to time, and to produce to him his books, papers, and writings, in order to prepare an abstract of his accounts and statement, to shew the particulars of his estate and effects previous to his final examination and discovery thereof, a copy of which abstract and statement the said bankrupt shall deliver to them ten days at least before his last examination. § 115.

Any person wilfully concealing any real or personal estate of

the bankrupt, and who shall not, within forty-two days after the issuing of the commission, discover such estate to one or more of the commissioners or assignees, shall forfeit the sum of 100*l.* and double the value of the estate so concealed; and any person who shall, after the time allowed to the bankrupt to surrender, voluntarily discover to one or more of the commissioners or assignees any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed five per cent. thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit, to be paid out of the estate recovered on such discovery. § 116.

*Of the Certificate.*

And every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made proveable under the commission, in case he shall obtain a certificate of such conformity so signed and allowed, and subject to such provisions as hereinafter directed; but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt. § 117.

And such certificate shall be signed by four-fifths in number and value of the creditors of the bankrupt, who shall have proved debts under the commission to the amount of 20*l.* or upwards, who shall thereby testify their consent to the bankrupt's discharge as aforesaid; and no such certificate shall be such discharge, unless the commissioners shall, in writing under their hands and seals, certify to the lord chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the creditors have signed in manner hereby directed; and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud; and unless such certificate shall, after such oath, be allowed by the lord chancellor, against which allowance any of the creditors of the bankrupt may be heard before the lord chancellor. § 118.

Provided, that certificates of conformity which now have been or shall be signed by three-fifths in number and value of such creditors as aforesaid, of any bankrupt against whom any commission shall have issued before the time of passing this act, may be signed by the commissioners and allowed by the lord chancellor: provided also, that after six calendar months from the last examination of any bankrupt under any commission issued after the passing of this act, such certificate may be signed by the commissioners, and allowed in manner aforesaid, and shall be such



discharge as aforesaid, if it shall have been signed by three-fifths in number and value of creditors as aforesaid, or by nine-tenths in number of such creditors. § 119.

Provided also, that after eighteen calendar months from the last examination of any bankrupt under a commission issued, either previously to or after the passing of this act, if three-fifths in number and value of such creditors, with the exception of one whose signature is necessary in respect of number or value, or if nine-tenths in number with the exception of one whose signature is necessary to make up that proportion, shall have signed the certificate, the commissioners may sign the same, and the bankrupt may thereupon petition the lord chancellor for the allowance thereof, having first caused every creditor who shall not have signed, and whose signature shall be so necessary as aforesaid, to be served with a copy of such petition, who may be heard against such allowance; and every such certificate, if allowed by the lord chancellor, shall be a valid discharge as aforesaid. § 120.

The commissioners shall not sign any certificate, unless they shall have proof by affidavit in writing of the signature of the creditors thereto, and of any person thereto authorized by any creditor, and of the authority by which such person shall have so signed; and if any creditor reside abroad, the authority of such creditor shall be attested by a notary public; and every such affidavit, authority, and attestation shall be laid before the lord chancellor, with the certificate, previous to the allowance thereof. § 121.

And any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this act and the special matter in evidence. § 122.

And any bankrupt who shall, after his certificate shall have been allowed, be arrested or have any action brought against him for any debt due by him before his bankruptcy, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give the act and the special matter in evidence; and such bankrupt's certificate, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution or detained in prison for any debt owing before he became bankrupt, where judgment has been obtained before the allowance of his certificate, any judge of the court wherein judgment has been so obtained may, on such bankrupt's producing his certificate, order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge

such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing. § 123.

And if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors, or who shall have been discharged by any insolvent act, shall become bankrupt, and obtain such certificate as aforesaid, unless his estate shall produce, after all charges, sufficient to pay every creditor under the commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself, his wife and children) shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such bankrupt was possessed at the issuing the commission. § 124.

And every bankrupt who shall have obtained his certificate, if the net produce of his estate shall pay the creditors who have proved under the commission ten shillings in the pound, shall be allowed five per cent. out of such produce, to be paid him by the assignees, provided such allowance shall not exceed 400*l.*; and every such bankrupt, if such produce shall pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings per cent.: provided such allowance shall not exceed 500*l.*; and every such bankrupt, if such produce shall pay such creditors fifteen shillings in the pound, shall be allowed and paid as aforesaid 10*l.* per cent.; provided such allowance shall not exceed 600*l.*; but if such produce shall not pay such creditors ten shillings in the pound, such bankrupt shall only be allowed and paid so much as the assignees and commissioners shall think fit, not exceeding 3*l.* per cent. § 125.

And in all joint commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner or partners may not be entitled to any allowance. § 126.

And no bankrupt shall be entitled to his certificate, or to be paid any such allowance, and that any certificate, if obtained, shall be void, if such bankrupt shall have lost by any sort of gaming or wagering, in one day, 20*l.* or within one year next preceding his bankruptcy, 200*l.*; or if he shall within one year next preceding his bankruptcy have lost 200*l.* by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or shall, after an act of bankruptcy committed, have destroyed, altered, mutilated, or falsified, or caused to be destroyed, altered, multi-



lated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document, with intent to defraud his creditors, or shall have concealed property to the value of 10*l.* or upwards; or if any person having proved a false debt under the commission, such bankrupt being privy thereto, or if he shall afterwards know the same, not disclosing the same to his assignees within one month after such knowledge. § 127.

And no bankrupt, after his certificate of conformity shall have been allowed under any commission of bankrupt already issued, or hereafter to be issued, shall be liable to pay or satisfy any debt, claim, or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand upon any contract, promise, or agreement made or to be made after the suing out of the commission, unless such promise, contract, or agreement be made in writing, signed by the bankrupt, or by some person thereto lawfully authorized, in writing, by such bankrupt. § 128.

The assignees shall, upon request made to them by the bankrupt, declare to him how they have disposed of his real and personal estate, and pay the surplus, if any, to such bankrupt, his executors, administrators, or assigns; and every such bankrupt, after the creditors who have proved under the commission shall have been paid, may recover the remainder of the debts due to him; but the assignees shall not pay such surplus, until all creditors who have proved under the commission shall have received interest upon their debts, to be calculated and paid at the rate and in the order following; (that is to say), all creditors whose debts are now by law entitled to carry interest in the event of a surplus, shall first receive interest on such debts at the rate of interest reserved or by law payable thereon, to be calculated from the proof thereof; and after such interest shall have been paid, all other creditors who have proved under the commission shall receive interest on their debts from the proof, at the rate of four per cent. § 129.

At any meeting of creditors after the bankrupt shall have passed his last examination, whereof and of the purport of which twenty-one days notice shall have been given in the London Gazette, if the bankrupt or his friends shall make an offer of composition, or security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the lord chancellor may, upon such acceptance being testified by them in writing, supersede the same. § 130.

And in deciding upon such offer as aforesaid, any creditor whose debt is below 20*l.* shall not be reckoned in number, but the debt due to such creditor, shall be computed in value; and that any

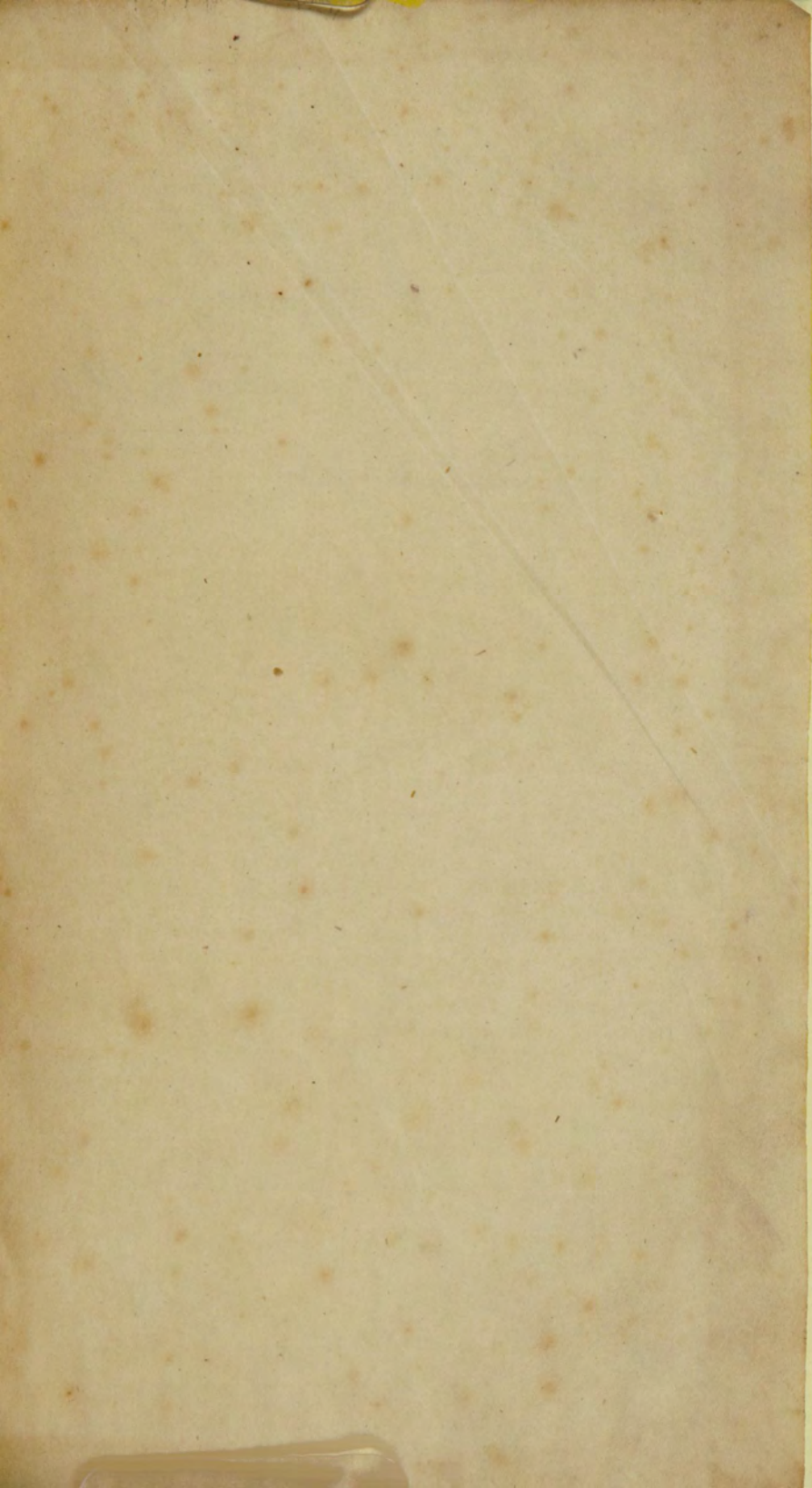
creditor to the amount of 50*l.* and upwards, residing out of England, shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat, and such creditor may vote by letter of attorney executed and attested in manner hereby required for such creditors voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall, if thereto required, make oath before the commissioners that there has been no such transaction between him, or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid. § 131.

And this act shall be construed beneficially for creditors, and that nothing herein contained shall alter the present practice in bankruptcy, except where any such alteration is expressly declared; and that it shall extend to aliens, denizens, and women, both to make them subject thereto, and to entitle them to all the benefits given thereby; and that all powers hereby given to, or duties directed to be performed by the lord chancellor, shall and may be exercised or performed by a lord keeper or lords commissioners of the great seal; and all powers given to, or duties directed to be performed by the commissioners or assignees, may be exercised or performed respectively by the major part of the commissioners, or by one assignee where only one shall have been chosen; and nothing herein contained shall render invalid any commission of bankruptcy now subsisting, or which shall be subsisting at the time this act shall take effect, or any proceedings which may have been had, or affect or lessen any right, claim, demand, or remedy which any person now has thereunder, or upon or against any bankrupt against whom any commission has or shall have issued, except as is herein specifically enacted; and that this act shall not extend either to Scotland or Ireland, except where the same are expressly mentioned. § 132.

And this act shall not, as to any enactments therein contained, take effect before the 1st day of May, 1825; save that so many of such enactments as relate to the certificates of persons becoming bankrupts before this act passed, or who shall become bankrupts before the said 1st day of May, shall take effect upon the passing of this act.

FINIS.





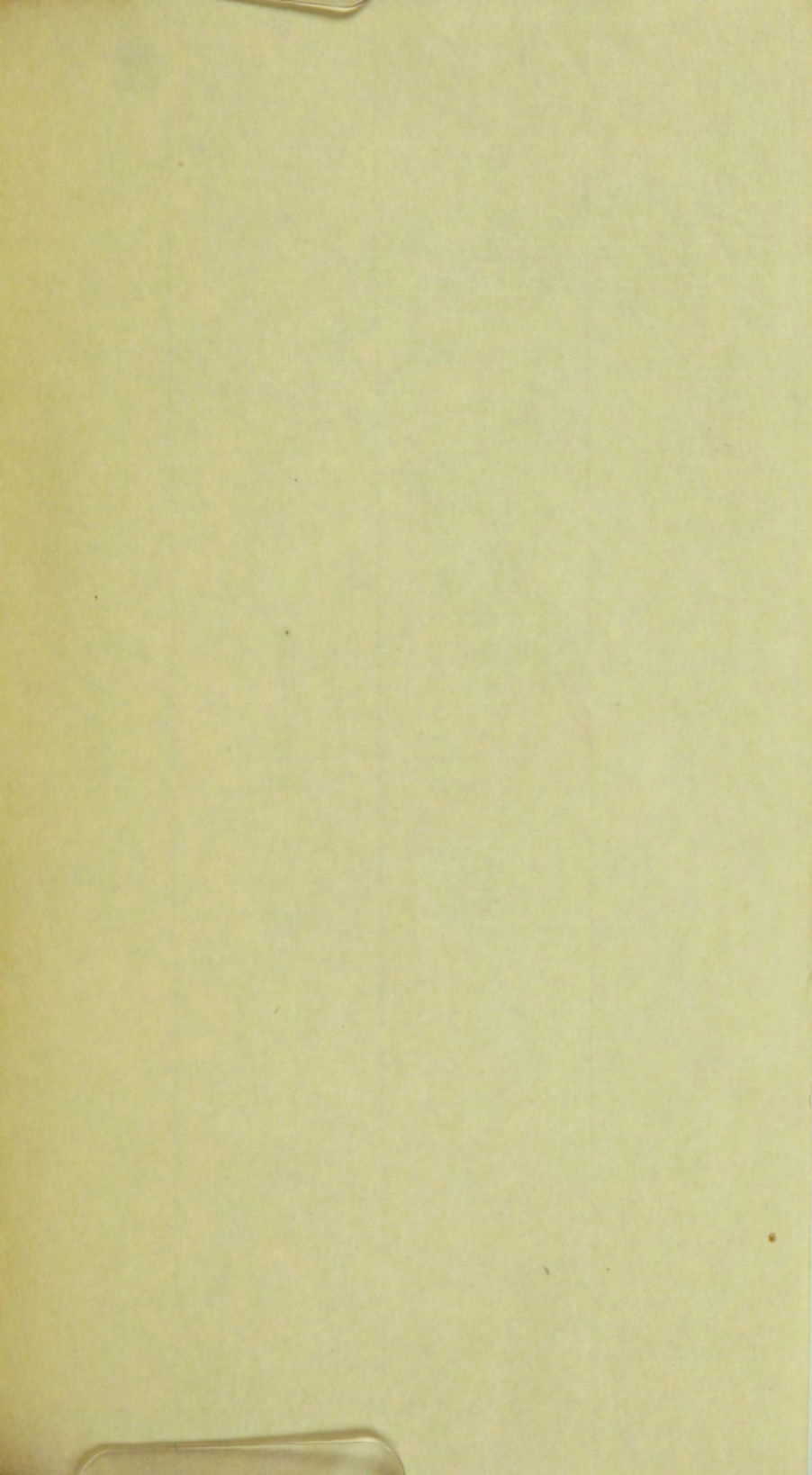
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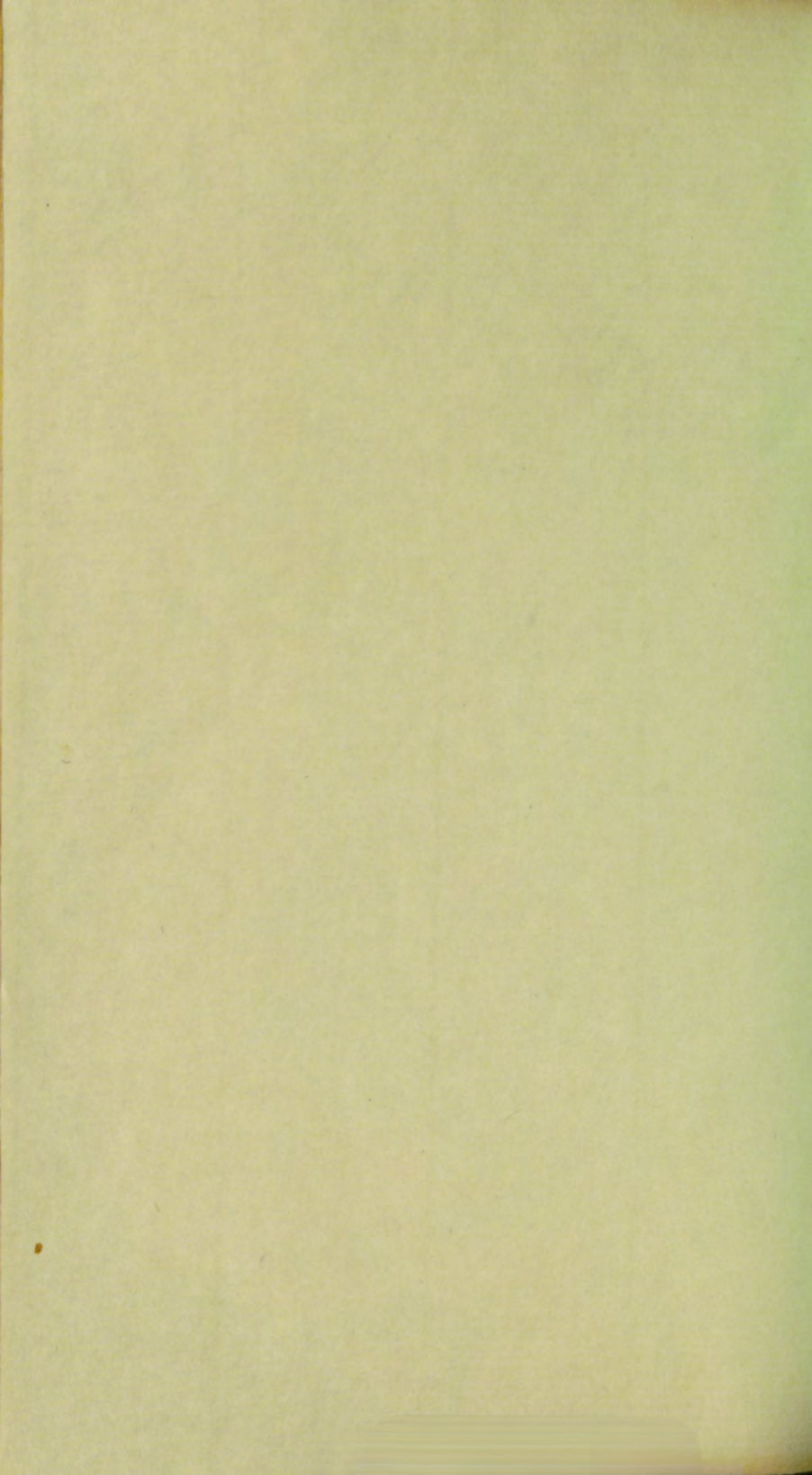
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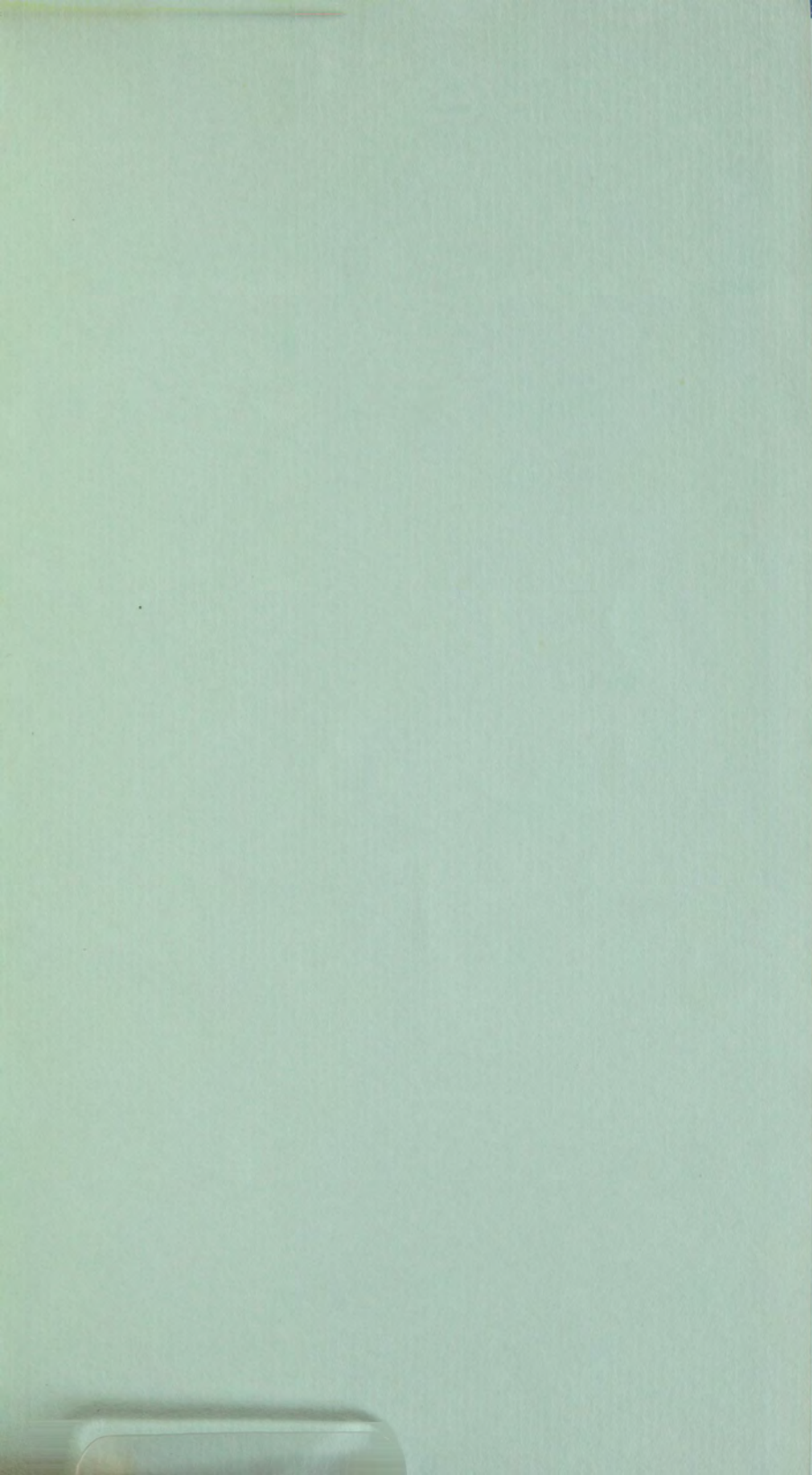
Balance due from Rate see H31





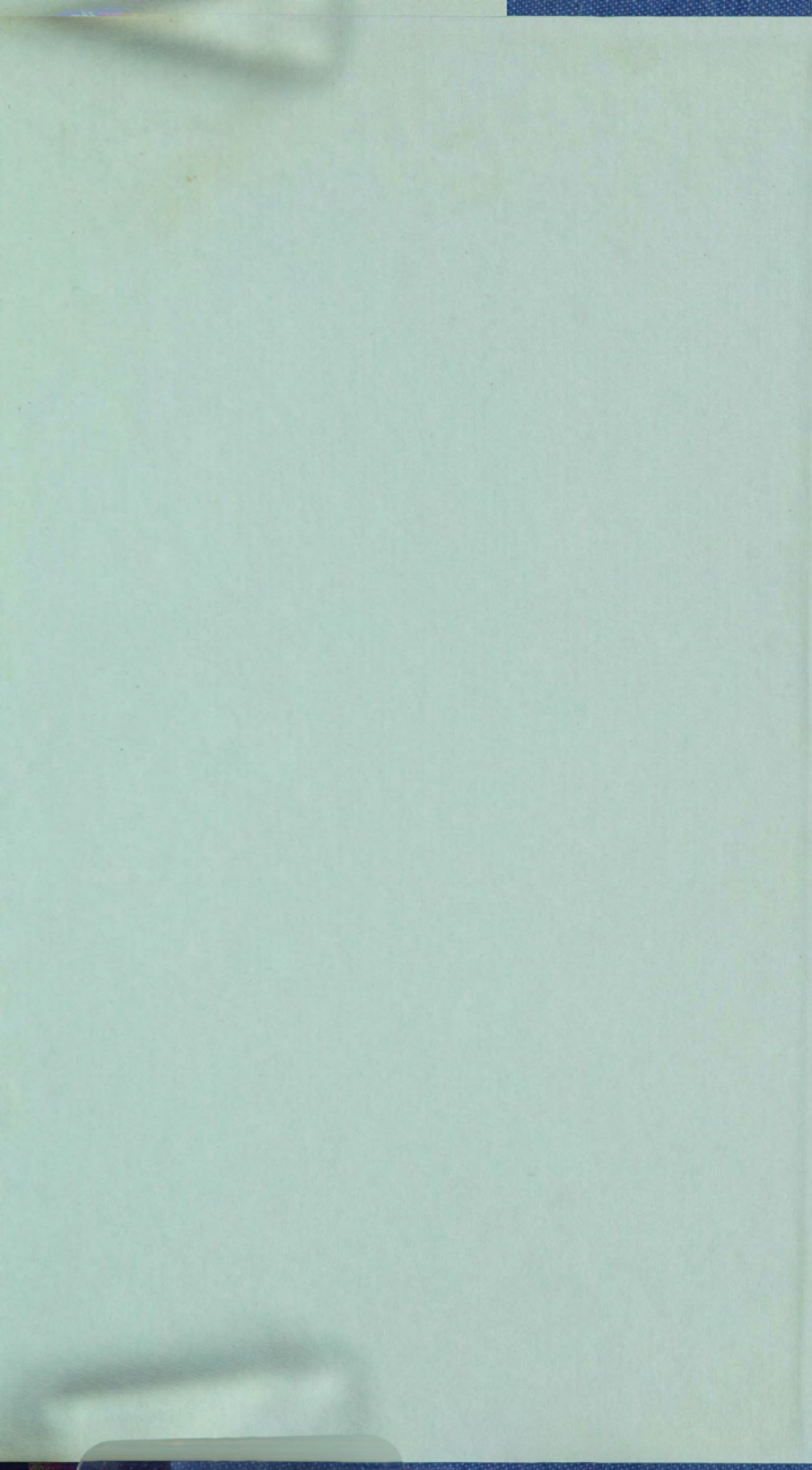


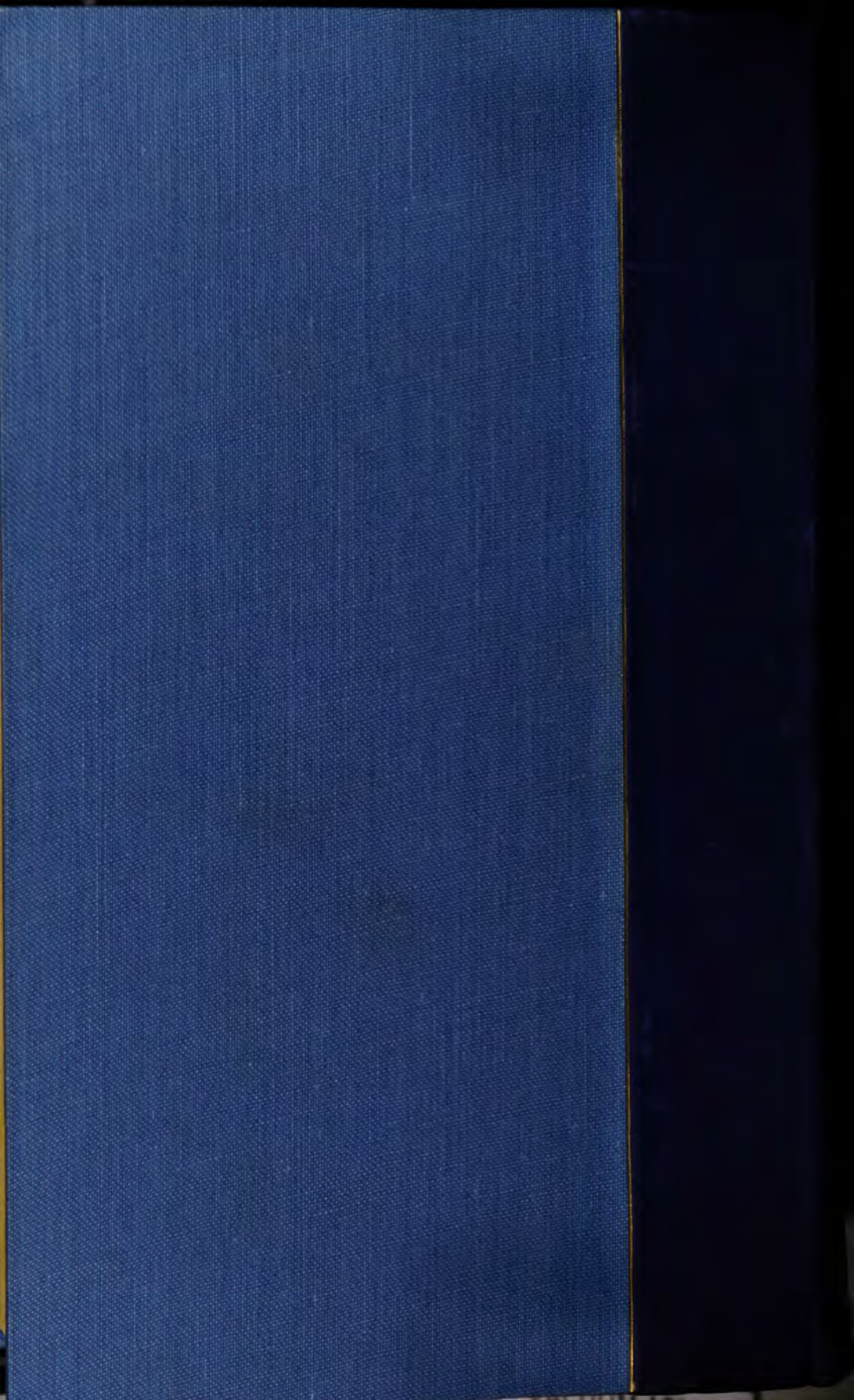














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