

A MODERN LAW DICTIONARY,

CONTAINING

THE PRESENT STATE OF THE LAW

IN THEORY AND PRACTICE;

WITH

A DEFINITION OF ITS TERMS, AND THE HISTORY OF ITS
RISE AND PROGRESS.

FACTOR.

F, Is a letter wherewith *felons*, &c. are branded and marked with a hot iron, on their being admitted to the benefit of clergy. See this *Dict. tit. Clergy*.

FABRICK LANDS, Are lands given towards the rebuilding or repairing of cathedral and other churches; for in ancient times almost every person gave by his will more or less, to the *fabrick* of the cathedral or parish church where he lived; and lands thus given were called *fabrick lands*, being *ad fabricam reparandum*: these lands are mentioned in the stat. 12 *Car. II. c. 8*.

FACTA ARMORUM, Feats of arms, justs, tournaments, &c. *His. Joh. Brompton, in Rich. I. p. 1261*.

FACTO, In fact; as where any thing is actually done, &c. See *De Facto*.

FACTOR, The agent of a merchant abroad, residing in this country; or *à contra*. A factor is authorized by a letter of attorney, with a salary or allowance for his care. He must pursue his commission strictly; and the same person may be factor for many different merchants. *Mal. 81*.

If the principal give the *factor* a general commission to act for the best, he may do for him as he thinks fit; but otherwise he may not. Though in commissions at this time, it is common to give the *factor* power in express words to dispose of the merchandise, and deal therein as if it were his own; by which the *factor's* actions will be excused, though they occasion loss to his principal. *Lex Mercat. Mal. 81. Str. 1178*.

Goods remitted to a *factor* ought to be carefully preserved; and he is accountable for all lawful goods which shall come to his hands; yet if the *factor* buy goods for his principal, and they re-

ceive damage after in his possession, through no negligence of his, the principal shall bear the loss; and if a *factor* be robbed, he shall be discharged in account brought against him by his principal. 4 *Repl.* 83. See tit. *Bailment*.

If the *factor* has orders from his principal not to sell any goods but in such a manner, and breaks those orders, he is liable to the loss or damage that shall be received thereby: and where any goods are bought or exchanged without orders, it is at the merchant's curtesy whether he will accept of them, or turn them on his *factor's* hands. When a *factor* has bought or sold goods pursuant to orders, he is immediately to give advice of it to his principal, lest the former orders should be contradicted before the time of his giving notice, whereby his reputation might possibly suffer: and where a *factor* has made a considerable profit for his principal, he must take due care in the disposition of the same; for without commission or particular orders he is answerable. A *factor* shall suffer for not observing orders; and no *factor* acting for another man's account in merchandise, can justify receding from the orders of his principal, though there may be a probability of advantage by it; if he make any composition with creditors without orders, he shall answer it to his principal. *Lex Mercatoria*.

Factors ought to observe the contents of all letters from their principals, or written to them by their order. A merchant is answerable in action upon the case for the deceits of his *factor*, in selling goods abroad; and as somebody must be a loser by such deceit, it is more reasonable that he who employs, and puts confidence in the deceiver, should lose, than a stranger. 1 *Salk.* 289.

Factors are liable to the statutes concerning bankrupts. Stat. 5 *Geo.* II. c. 30. § 39. See tit. *Bankrupt*. *Factor* not to buy cattle on his own account. Stat. 31 *Geo.* II. c. 40. § 11. See tit. *Cattle*.

A bare commission to a *factor* to sell and dispose of merchandise is not sufficient power for the *factor* to entrust any person, or to give a further day of payment than the day of the sale of the goods; for in this case, on the delivery of the one, he ought to receive the other: and by the general power of doing as if it were his own, he may not trust an unreasonable time, viz. beyond one or three months, &c. the usual time allowed for the commodities disposed of; if he doth, he shall be answerable to his principal out of his own estate. 1 *Bulst.* 102. But in 2 *C. C.* 57. it is said, that by his general commission a *factor* has authority to sell upon credit.

If a *factor* buys goods on account of his principal, where he is used so to do, the contract of the *factor* shall oblige the principal to a performance of the bargain; and the principal is the proper person to be prosecuted on non-performance: but if the *factor* enters into a charter-party of affreightment with a master of a ship, the contract obliges him only; unless he lades aboard generally his principal's goods, then both the principal and lading become liable for the freight, and not the *factor*. *Goldsb.* 137.

It is a general rule that where a *factor*, who is authorized to sell goods in his own name, makes the buyer debtor to himself, though he is not answerable to his principal for the *debt*, if the money be not paid; yet he has a right to receive it if it be paid, and his receipt is a discharge to the buyer. The *factor* may compel such payment by action, and the buyer cannot defend himself by saying

that the principal was indebted to him more than the amount. *Cowfi.* 255, 256. Where goods are sold by a factor at his own risk, for which he has an additional allowance, the vendee is not answerable to the owner. *Str.* 1182. See *Del Credere*.

Though a factor has power to sell, and thereby bind his principal, yet he cannot bind or affect the property of the goods by pledging them as a security for his own debt, though there is the formality of a bill of parcels and a receipt. *Str.* 1178.

If a factor sells goods as his own, by endorsement of the bill of lading, though no delivery is made, the goods being at sea, the vendee shall keep possession, unless fraud appears between him and the factor. *4 Burr.* 2046. *1 Black. Rep.* 629. See *post*, the last paragraph of this article.

It hath been held in equity, that if one employs a factor, and entrusts him with the disposal of merchandise, and the factor receives the money, and dies indebted in debts of a higher nature, and it appears by evidence that this money was vested in other goods, and remains unpaid, those goods shall be taken as part of the merchant's estate, and not the factor's; but if the factor have the money, it shall be looked upon as the factor's estate, and must first answer the debts of superior creditors, &c. for as money has no ear-mark, equity cannot follow that in behalf of him who employed the factor. *1 Salk.* 160.

If a person doth employ a factor to sell goods, who sells them on credit, and before the money is paid dies indebted more than his assets will pay; this money shall be paid to the principal merchant, and not to the factor's administrator, but thereout must be deducted what was due for commission; for a factor is in nature only of a trustee for his principal. *2 Vern.* 638.

Bills remitted to a factor or banker, while unpaid, are in the nature of goods unsold; and if the factor become bankrupt, must be returned to the principal, subject to such lien as the factor may have thereon. *2 Black. Rep.* 1154.

A factor has a *lien* on goods consigned to him, not only for incident charges, but as an *item* of mutual account, for the general balance due to him, so long as he retains the possession; if he parts with the possession, he parts with his *lien*. See *1 Burr.* 489. *1 Black. Rep.* 104. If he be surety in a bond for his principal, he has a lien on the price of the goods sold by him for his principal, to the amount of the sum he is bound for. *Cowfi.* 251. A dyer, merely as a manufacturer, has not a general lien; but a packer being in the nature of a factor has. *4 Burr.* 2214.

A factor has no lien on goods for a *general* balance, unless they come into his *actual* possession; and if, in consideration of goods being consigned to him, he accept bills drawn by the consignor, and pay part of the freight, and become insolvent before the bills are due, and before the goods get into his actual possession, the consignor may stop them *in transitu*. *1 Term Rep.* 119. If a factor accept bills drawn by his principal upon the faith of consignments agreed to be made by the principal to the factor, and both of them become bankrupts before a cargo consigned come into possession of the factor, the factor's assignees have no property in such cargo, and cannot recover the produce of it against the assignees of the principal, if the latter have sold it, and re-

ceived the purchase-money. 1 *Term Ref.* 783. See 4 *Bro. P. C.* (8vo. ed.) 47.

The consignor may stop goods *in transitu* before they get into the hands of the consignee, in case of the insolvency of the consignee; but if the consignee assign the bills of lading to a third person for a valuable consideration, the right of the consignor as against such assignee is devested. There is no distinction between a bill of lading endorsed in blank, and an endorsement to a particular person. 4 *Bro. P. C.* (8vo. edit.) 57. See 2 *Term Ref.* 63. 1 *Hen. Black. Ref.* 357. And further, as to stopping goods *in transitu*, 2 *Term Ref.* 674. 3 *Term Ref.* 465.

A factor cannot pledge the goods of his principal by endorsement and delivery of the *bill of lading*, any more than by the delivery of the goods themselves; though the endorsee knew not that he was factor. And where goods were consigned on the *joint account* of the consignor and consignee, and a bill of lading was sent to deliver the goods to the consignee or his assigns, who afterwards endorsed and delivered it to the defendants, upon condition of their making an advance to him on it, which they failed to do, but claimed to retain it as a security for prior advances, held that such endorsement and delivery of the bill of lading did not devest the consignor's right to stop the goods *in transitu* upon the insolvency of the consignee, who had not paid for them. *Newsom et al. v. Thornton et al.* 6 *East's Ref.* 17. See further, this *Dict.* tit. *Merchant*.

FACTORAGE, Is the wages or allowance paid and made to a factor by the merchant. The gain of factorage is certain, however the success proves to the merchant; but the commissions and allowances vary according to the customs and distance of the country, in the several places where factors are resident. *Lex Mercat.* See tit. *Factor*.

FACTUM, A man's own act and deed; fact or feat; particularly used in the civil law, for any thing stated and made certain. See *Fait*.

FACULTY, [*facultas*.] As restrained from the original and active sense, to a particular understanding in law, is used for a privilege or special dispensation, granted to a man by favour and indulgence, to do that which by law he ought not to do. And for the granting of these, there is an especial court under the *archbishop of Canterbury*, called the *court of the faculties*; and the chief officer thereof the *master of the faculties*; who has power by the stat. 25 *Hen. VIII. cap.* 21. to grant dispensations; as to marry persons without the bans first asked, (and every diocesan may make the like grants,) to ordain a deacon under age, for a son to succeed the father in his benefice, one to have two or more benefices incompatible, &c. And in this court are registered the certificates of bishops and noblemen granted to their chaplains, to qualify them for pluralities and non-residence. 4 *Inst.* 337. See tit. *Chaplain*. In the *Scotch* law, faculty is synonymous with power: thus a faculty to burden, is the power or right of charging an estate with a sum of money. See tit. *Powers*.

FASTING MEN, In *Mon. Angl.* tom. 1. p. 100. are rendered to signify vassals; but *Cowel* thinks they rather mean pledges or bondsmen; which, by the custom of the *Saxons*, were *fast* bound

to answer for one another's peaceable behaviour. See *Festing-men*.

FAG, A knot or excrescency in cloth; and in this sense it is used in the statute 4 *Edw. IV. cap. 1*. The *fag-end* signifies that end of a piece of cloth or linen, where the weaver ends his piece, and works up the worst part of his materials.

FAGGOT, A badge wore in the times of popery, by persons who had recanted and abjured what was then adjudged to be heresy: those were condemned not only to the penance of carrying a *faggot*, as an emblem of what they had merited, to such an appointed place of solemnity; but for a more durable mark of infamy, they were to have the sign of a *faggot* embroidered on the sleeve of their upper garment; and if this badge or *faggot* was at any time left off, it was often alleged as the sign of *apostacy*.

FAIDA, Malice or deadly feud. *Leg. Hen. I. c. 88*.

FAILURE OF RECORD, Is when an action is brought against a man, who alleges in his plea matters of record in bar of the action, and avers to prove it by the record; but the plaintiff saith, *nul tiel record*, viz. denies there is any such record: upon which the defendant hath day given him by the court to bring it in; and if he fails to do it, then he is said to *fail of his record*; and the plaintiff shall have judgment to recover. *Terms de Ley*. See further, tit. *Amendment, Jeofails, Record*.

FAINT-ACTION. Fr. *feinte*.] A *feigned* action; such that although the words of the writ are true, yet for certain causes the plaintiff hath no title to recover thereby; but a *false action* is properly where the words of the writ are *false*. *Co. Litt. 361*.

FAINT-PLEADER. A fraudulent, false, or collusory manner of pleading to the deceit of a third person; against which, among other things, was made the stat. 3 *Edw. I. cap. 19*.

FAIR-PLEADER. See tit. *Beau-Pleader*.

FAIR. Fr. *feire*, Lat. *feria, nundina*.] A solemn or greater sort of market, granted to any town by privilege, for the more speedy and commodious providing of such things as the subject needeth; and the utterance of what commodities we abound in above our own uses and occasions: and both our *English* and the *French* word seems to come from *feria*; [festivals;] because it is incident to a *fair* that persons shall be privileged from being molested or arrested in it, for any other debt or contract than what was contracted in the same, or at least was promised to be paid there. See stat. 17 *Edw. IV. c. 2*. made perpetual by 1 *Rich. III. c. 6*. and this *Dict. tit. Courts of Pie-powders*. See also stats. 2 *Edw. III. c. 15*. 5 *Edw. III. c. 5*. 27 *Hen. VI. c. 5*. 1 & 2 *P. & M. c. 7*. 18 *Eliz. c. 21*.

I. *The Right to a Fair, and the Manner of holding it.*

II. *The Duty, Power, and Interest of the Owners of Fairs.—How far a Sale in a Fair changes the Property of a Thing therein sold, see this Dict. tit. Market.*

I. The first institution of fairs and markets seems plainly to have been for the better regulation of trade and commerce, and that

merchants and traders might be furnished with such commodities as they wanted, 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 a grant. 2 *Inst.* 220. 3 *Mod.* 123.

And therefore, if any person sets up any such fair or market, without the king's authority, a *quo warranto* lies against him; and the persons who frequent such fair, &c. may be punished by fine to the king. 3 *Mod.* 127.

Also it seems, that if the king grants a patent for holding a fair or market, without a writ of *ad quod damnum* executed and returned, that the same may be repealed by *scire facias*; for though such fairs and markets are a benefit to the commonwealth, yet too great a number of them may become nuisances to the public, as well as a detriment to those who have more ancient grants. 3 *Lev.* 222.

Fairs are generally kept once or twice in the year; and it has been observed, that *fairs* were first occasioned by the resort of people to the feast of Dedication, and therefore in most places the *fairs*, by old custom, are on the same day with the wake or festival of that saint to whom the church was dedicated; and for the same reason they were kept in the church-yard, till restrained by stat. 13 *Edw. I. st. 2. c. 6.* 2 *Inst.* 221. *Blount.* The court of *piepowder* is incident to every fair, &c. By stat. 2 *Edw. III. c. 15.* *fairs* are not to be kept longer than they ought by the lords thereof, on pain of their being seised into the king's hands, until such lords have paid a fine for the offence, and proclamation is to be made how long *fairs* are to continue. By stat. 5 *Edw. III. c. 5.* no merchant shall sell any goods or merchandise at a fair after the time of the fair is ended, under the penalty of forfeiting double the value of the goods sold, one fourth part thereof to the prosecutor, and the rest to the king. Any citizen of London may carry his goods or merchandise to any fair or market in England at his pleasure. See stat. 3 *Hen. VII. c. 9.* and this *Dict. tit. London.*

It seems clearly agreed, that if a person hath a right to a fair or market, and another erects a fair or market so near his, that it becomes a nuisance to his fair, &c. that for this detriment and injury done to him, an action on the case lies; for it is implied in the king's grant, that it should be no prejudice to another. 2 *Roll. Abr.* 140.

Also, although the new market be held on a different day, yet an action on the case lies; for this, by forestalling the ancient market, may be a greater injury to the owner, than if held on the same day with his. 2 *Saund.* 172. 1 *Mod.* 69. See tit. *Market.*

If a man hath a fair or market, and a stranger disturbs those who are coming to buy or sell there, by which he loses his toll, or receives some prejudice in the profits arising from his fair, &c. an action on the case lies. 1 *Roll. Abr.* 106. 2 *Vent.* 26. 28. So if upon a sale in a fair a stranger disturbs the lord in taking the toll, an action upon the case lies for this. 1 *Roll. Abr.* 106.

The king is the sole judge where fairs and markets ought to be kept; and therefore it is said, that if he grants a market to be kept in such a place, which happens not to be convenient for the country, yet the subjects can go to no other; and if they do, the owner of the soil where they meet, is liable to an action at the suit of the grantee of the market. 3 *Mod.* 123. But if no place be limited for keeping a fair by the king's grant, the grantees may keep it where they please, or rather where they can most conveniently; and if it be so limited, they may keep it in what part of such place they will. 3 *Mod.* 108.

At what time fairs are to be held, see stat. 27 *Hen. VI. c. 5.* & 1 *Car. I. c. 1.* 29 *Car. II. c. 7.* and this *Dict. tit. Holidays.*

II. Owners and governors of fairs are to take care that every thing be sold according to just weight and measure; for that and other purposes they may appoint a clerk of the fair or market, who is to mark and allow all such weights, and for his duty herein can only take his reasonable and just fees. See 4 *Inst.* 274. *Moore*, 523. 1 *Salk.* 327.

Fairs and markets are such franchises as may be forfeited; as if the owners of them hold them contrary to their charter, as by continuing them a longer time than the charter admits, by disuser, and by extorting fees and duties where none are due, or more than are justly due. 2 *Inst.* 220. *Finch*, 164. 3 *Mod.* 108.

As to their *interest*, it arises chiefly from tolls. Toll payable at a fair or market is a reasonable sum of money due to the owner of the fair or market, upon sale of things tollable within the fair or market, or for stallage, pickage, or the like. 2 *Inst.* 222. 2 *Jones*, 207.

But this is not incident to a fair or market without special grant; for where it is not granted, such a fair or market is accounted a free fair or market. 2 *Inst.* 220. *Cro. Eliz.* 559.

Toll is a matter of private benefit to the owner of the fair or market, and not incident to them; therefore, if the king grants a fair or market, and grants no toll, the patentee can have none, and such fair or market is counted free. *Cro. Eliz.* 558. 2 *Inst.* 220. *S. P.* 2 *Lutw.* 1326. *S. P.* resolved.

Also if the king, at the time he grants a fair or market, grants a toll, and the same is outrageous and excessive, the grant of the toll is void, and the same becomes free. 2 *Inst.* 220. 2 *Lutw.* 1336. But the king, after he grants a fair or market, may grant that the patentee may have a reasonable toll; but this must be in consideration of some benefit accruing from it to those who trade and merchandise in such fair or market. 2 *Inst.* 221.

No toll shall be paid for any thing brought to the fair or market, before the same is sold, unless it be by custom time out of mind, and upon such sale the toll is to be paid by the buyer; and therefore my Lord *Coke* says, that a fair or market by prescription is better than one by grant. 2 *Inst.* 221.

And by stat. *Westm. 1. cap. 31.* "touching them that take outrageous toll, contrary to the common custom of the realm in market towns, it is provided, that if any do so in the king's town, which is let in fee-farm, the king shall seize into his own hand the franchise of the market; and if it be another's town, and the same be done by the lord of the town, the king shall do in like manner;

and if it be done by a bailiff, or any mean officer, without the commandment of his lord, he shall restore to the plaintiff as much more, for the outrageous taking, as he had of him, if he carried away his toll, and shall have forty days' imprisonment."

But where by custom a toll is due upon the sale of any goods in a fair or market, and he who ought to pay it refuses, an action on the case lies against him. 1 *Roll. Abr.* 103, 104. 106.

Some persons however are *exempt* from payment of toll, and if the king or any of his progenitors have granted to any to be discharged of toll, either generally or specially, this grant is good to discharge him of all tolls to the king's own *fairs* or markets, and of the tolls, which, together with any *fair* or market, have been granted after such grant of discharge; but cannot discharge tolls formerly due to subjects either by grant or prescription. 2 *Inst.* 221.

Also the king himself shall not pay toll for any of his goods; and if any be taken, it is punishable within the statute *Westm.* 1. *cap.* 31. 2 *Inst.* 221. So tenants in ancient demesne are free and quit from all manner of tolls in fairs and markets, whether such tenants hold in fee, or for life, years, or at will. 2 *Inst.* 221. 4 *Inst.* 269. 1 *Roll. Abr.* 321.

But this privilege does not extend to him who is a merchant, and gets his living by buying and selling, but is annexed to the person in respect of the land, and to those things which grow and are the produce of the land. *Fitz. N. B.* 228. 2 *Leon.* 191. *Cro. Eliz.* 227. 2 *Inst.* 221. 1 *Roll. Abr.* 321, 322.

Owners of *fairs* and markets are to appoint toll-takers or book-keepers, on pain of 40*s.* and they shall enter and give account of horses sold, &c. Stat. 1 & 2 P. & M. c. 7. 31 *Eliz. c.* 12. See further, tit. *Toll, Horses, Market.*

FAIT, *factum.*] A deed or writing, lawfully executed to bind the parties thereto. See tit. *Deed.*

FAIT ENROLLE, *Fr.*] A deed of bargain and sale, &c. and forging the enrolment of it is a great misdemeanor, but not forgery within the stat. 5 *Eliz.* 1 *Keb.* 568.

FAITOURS, *Fr.*] In the stat. 7 *Rich. II. cap.* 5. is used for evil doers, and may be interpreted idle livers, from *faitardise*, which signifies a kind of sleepy disease, proceeding from too much sluggishness; and in the same statute it seems to be synonymous with vagabonds. *Terms de Ley.* See tit. *Poor, Vagrants.*

FALANG, A jacket or close coat. *Blount.*

FALCATURA, One day's mowing of grass; a customary service to the lord by his inferior tenants: *falcata* was the grass fresh mowed and laid in *swathes*; and *falcator* the servile tenant performing the labour. *Kennet's Gloss.*

FALCO, A Falcon. *Falconarius*, a falconer; *falco gentilis*, a jer-falcon; *Falco Spuarius*, a Sparrow Hawk. *Cowel.*

FALDA, A sheepfold. *Rot. Chart.* 6 *Hen. III.*

FALDAGE, *faldagium.*] A privilege which several lords anciently reserved to themselves, of setting up *folds* for sheep in any fields within their manors, for the better manurance of the same; and this was usually done not only with their own but their tenant's sheep, which they call *secta faldæ*. This *faldage* is termed in some

places a *fald course*; and in old charters *faldoca*, i. e. *libertas faldæ*, or *faldagii*.

FALDÆ CURSUS, A sheep walk, or feed for sheep. 2 *Vent.* 139.

FALDFEY, FALD-FEE, A fee or rent paid by some customary tenants for liberty to fold their sheep upon their own land.

FALDISTOR, *Sax.*] The highest seat of a bishop enclosed round with a lattice. *Cowel.*

FALDWORTH, A person of age, that he may be reckoned of some decennary. *Du Fresne.*

FALERE, Lat. *phalera* } The tackle and furniture of a cart or wain. *Mon. Angl. tom. 2. 256.*

FALESIA, A great rock, bank or hill by the sea side. *Domesd.*

FALK-LAND, or FOLK-LAND, See tit. *Copyhold.*

FALLOW LAND, See *Warrectum et Terra Warrecta.*

FALLUM, An unexplained term for some particular sort of land. *De duobus arvis et viginti fallis in, &c. Mon. Ang. tom. 2. 425.*

FALMOTUM, or *falkmote*, the same with *folkemote*. See tit. *Parliament.*

FALSE ACTION, If brought against one, whereby he is cast into prison, and dies pending the suit, the law giveth no remedy in this case, because the truth or *falsehood* of the matter cannot appear before it is tried: and if the plaintiff be barred or nonsuited, at common law, regularly all the punishment is amercement. *Jenk. Cent. 161.* See *Faint Action*. But if one commence a bailable action against another and hold him to bail thereon, either without a reasonable cause, or for something considerable, more than what is *bona fide* due, an *action upon the case* will lie for the vexation and injury. See tit. *Action II.*

FALSE CLAIM, By the forest laws, is where a man claims more than is his due, and is amerced and punished for the same. A person had a grant, by charter, of the tenth of all the venison in the forest of *Lancaster*, viz. *in carne tantum sed non in corio*; and because he made a *false claim*, by alleging that he ought to have the tenth of all the venison within the forest, as well *in carne*, as *in corio*, therefore he was *in misericordia de decima venationis sue in corio non percipiendo*. *Manwood, c. 25.*

FALSE FORM, In proceedings at law, is aided by a verdict; though not where there is want of certainty, &c. 1 *Keb.* 734. 876. See tit. *Amendment, Error.*

FALSE IMPRISONMENT.

FALSUM IMPRISONAMENTUM.] A trespass committed against a person, by arresting and imprisoning him without just cause, contrary to law; or where a man is unlawfully detained without legal process; it is also used for a writ which is brought for this trespass.

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 an 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 public streets.

2 *Inst.* 589. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority: which authority may arise either from some process from the courts of justice, or from some warrant from a legal officer having power to commit, under his hand and seal, and expressing the cause of such commitment. 2 *Inst.* 46. See this *Dict.* tit. *Arrest, Commitment, Constable*. Such authority may also arise from some other special cause; warranted, for the necessity of the thing, either by common or statute law: as the arresting of a felon by a private person without warrant; the impressing of mariners for the public service; or the apprehending wagoners (under stat. 13 *Geo.* III. c. 78.) for misbehaviour in the public highways. False imprisonment may also arise by executing a lawful warrant or process at an unlawful time, as on a *Sunday*. See tit. *Arrest, Sunday*.

The means of removing the actual injury of false imprisonment are fourfold; but writs of *mainprize*, *odio et atia*, *homine replegiando*, and *habeas corpus*. See this *Dict.* under those titles. The remedy for a satisfaction for the injury is by action either of case or trespass: and therein the party shall recover damages for the injury he has received.

The distinction between the action of case and action of trespass for this injury is thus stated. Where the immediate act of imprisonment proceeds from the defendant, the action can only be trespass: but when the act of imprisonment by one person, is in consequence of information from another, there an action on the case is a proper remedy. *Morgan v. Hughes*, 2 *Term Rep.* K. B. 232.

The most atrocious degree of this offence, that of sending any subject to this realm a prisoner into parts beyond the seas, whereby he is deprived of the friendly assistance of the laws to redeem him from such his captivity, is criminally punished with the pains of *præmunire*, and incapacity to hold any office, without a possibility of pardon. Stat. 31 *Car.* II. c. 2. See this *Dict.* tit. *Exile, Habeas Corpus*. And by the stat. 43 *Eliz.* c. 13. to carry any one by force out of the four northern counties, or imprison him within the same, in order to ransom him, or make spoil of his person or goods, is felony without benefit of clergy in the principals and all accessaries before the fact. Inferior degrees of this offence of false imprisonment are also punishable by indictment, and the delinquent may be fined and imprisoned. 4 *Comm.* 218.

By the stat. of limitations, 21 *Jac.* I. c. 16. this action must be brought within four years; which has been construed of be from the end of any continued imprisonment. *Salk.* 420. By stat. 24 *Geo.* II. c. 44. actions against justices of peace, or constables acting under their warrants, must be brought within six months; and one month's notice of bringing the action must be given them; and by stat. 21 *Jac.* I. c. 12. those officers may plead the general issue, and give the special matter in evidence. See this *Dict.* tit. *Justice, Constable Action*.

No action of false imprisonment lies against a judge of a court of record for any act done by him in the execution of his office, nor for any mistake of judgment. *Salk.* 396.

Action on the case for false imprisonment has been held to lie against a superior officer where the imprisonment at first was le-

gal, but was afterwards aggravated with many circumstances of cruelty and was continued beyond necessary bounds. So also where a captain of a man of war imprisoned the defendant three days for a supposed breach of duty, without hearing him, and then released him without bringing him to a court martial. 1 *Term Rep.* K. B. 536, 537.

If erroneous process issues out of a court that hath jurisdiction of the matter, and the bailiff or officer executes it, whereby the party is imprisoned, the officer shall be excused in action of *false imprisonment*: but if the court out of which the process issues hath no cognisance of the cause, it is otherwise: for in such case the whole proceedings are *coram non judice*, and the officer will not be excused. 10 *Rep.* 75. See tit. *Arrest, Constable*.

An officer hath a warrant upon a *capias ad satisfaciend'* against an earl, or countess, &c. who are privileged in their persons, and he arrests them: it is said action of *false imprisonment* will not lie against the officer, because he is not to examine the judicial act of the court, but to obey. 6 *Rep.* 56. 10 *Rep.* 75.

If an arrest is made by one who is no legal officer, it is *false imprisonment*, for which action lies. *Co. Litt.* 69. An action of *false imprisonment* lies against a bailiff for arresting a person without warrant, though he afterwards receives a warrant: and so it is if he arrests one after the return of the writ is past; for it is then without writ. 2 *Inst.* 53. If a sheriff, or any of his bailiffs, arrests a man out of his county, &c. or after the sheriff is discharged of his office; or a person arrests one on a justice's warrant after his commission is determined, &c. it will be *false imprisonment*. *Dyer*, 41. And if the sheriff, after he hath arrested a man lawfully, when a legal discharge comes to him, as a *supersedecas*, or the like, do not then discharge the party, he may be sued in this action. 2 *Rich. I.* 12. *Fitz.* 253.

In case the plaintiff in a suit brings an unlawful warrant to a sheriff, and shows him the defendant, requiring him to make the arrest; or if he bring a good warrant and direct the sheriff to a wrong man, &c. for this the action of *false imprisonment* will lie against both. *Bro. Tresp.* 99. 307. *Faux. Impr.* 19. 1 *Brownl.* 211. If a warrant be granted to arrest, or apprehend a person, where there are several of the name, and the bailiff or other officer arrests a wrong person, he is liable to action of *false imprisonment*; and he is to take notice of the right party at his peril. *Dyer*, 244. *Moor*, 457.

A man arrested on a *Sunday* may bring his action of *false imprisonment*; but one has been refused to be released in such a case. 5 *Mod.* 95. See tit. *Arrest, Sunday*. If a bailiff demands more than his just fees, when offered him, and keep a person in custody thereupon, it is *false imprisonment* and punishable: and if a sheriff, or gaoler, keeps a prisoner in gaol, after his acquittal, for any thing except his fees, it is unlawful imprisonment. 2 *Inst.* 482. *Wood*, 16. If a man falsely imprisons *A. B.* and the gaoler detains him till he pays so much money, he shall have action of *false imprisonment*, and taking so much money from him against such person. *Mod. Cas.* 179.

Unlawful or *false imprisonment* is sometimes called *duress of*

emprisonment, where one is wrongfully imprisoned till he seals a bond, &c. 2 *Inst.* 482. See tit. *Duress*.

An imprisonment will be unlawful, and give this action, although the cause be good, when he that makes it doth the same without any colour of authority; or if he has a colour, yet if he hath no good authority from the court, &c. or where a court or officer hath power, but do not well make it out; or when the authority is well made forth, and not rightly pursued and executed. 4 *Rep.* 64. 8 *Rep.* 67. *Dyer*, 242. If *A.* having been robbed, suspect *B.* to be guilty, and take and deliver him into the charge of a constable present; *B.* if innocent may maintain action of trespass and false imprisonment against *A.* 6 *Term Rep.* *K. B.* 315.

A conviction of a justice of peace having competent jurisdiction, upon which the plaintiff was arrested and imprisoned, is till reversed or quashed, conclusive evidence in favour of the justice against whom an action of trespass and false imprisonment was brought. 7 *Term Rep.* *K. B.* 633. *n.*

Further as to relief in cases of false imprisonment or wrongful detainer of the person, see this *Dict.* tit. *Habeas Corpus, Imprisonment.*

FALSE JUDGMENT, *falsum fudicium.*] A writ that lieth where *false judgment* is given in the county court, court baron, or other courts *not of record.* *Fitz. N. B.* 17, 18. See tit. *Error.*

A judgment may be falsified, reversed or avoided without a writ of error for matter foreign to, or *dchors* the record; that is not apparent upon the face of it, so that they cannot be assigned for error in the superior court, which can only judge from what appears in the record itself: and therefore if the whole record be not certified, or not timely certified by the inferior court, the party injured thereby, in both civil and criminal cases may allege a *diminution* of the record, and cause it to be rectified. See this *Dict.* tit. *Diminution.* Thus if any judgment whatever be given by persons who had no good commission to proceed against the person condemned, it is void, and may be falsified by showing the special matter without writ of error. As where a commission issues to *A.* and *B.* and twelve others, or any two of them, of which *A.* or *B.* shall be one, to take and try indictments, and any of the other twelve proceed without the interposition or presence of either *A.* or *B.* in this case all proceedings, trials, convictions and judgments are void for want of a proper authority in the commissioners, and may be falsified upon bare inspection without the trouble of a writ of error. 2 *Hawk. P. C. c.* 50. § 2. It being a high misdemeanor in the judges so proceeding, and little, if any thing, short of murder in them all, in case the person *so attainted* be executed and suffer death. 4 *Comm.* 390.

So likewise if a man purchases land of another, and afterwards the vendor is, either by outlawry or his own confession, convicted and attainted of treason or felony previous to the sale or alienation; whereby such land becomes liable to forfeiture or escheat: now upon any trial the purchaser is at liberty, without bringing any writ of error, to falsify, not only the time of the felony or treason supposed, but the very point of the treason or felony itself; and is not concluded by the confession or outlawry of the vendor: though the vendor himself is concluded, and not suffered then to

deny the fact which he had by confession or flight acknowledged. But if such attainder of the vendor was by verdict, or the oath of his peers, the alienee cannot be received to falsify or contradict the *fact* of the crime committed; though he is at liberty to prove a mistake in *time*: or that the offence was committed after the alienation and not before. 3 *Inst.* 231. 1 *Hale's P. C.* 361.

This writ may be brought on a judgment in a plea, real or personal: and for errors in the proceedings of inferior courts, or where they proceed without having jurisdiction, writ of *false judgment* lieth: though the plaintiff assign errors in a writ of *false judgment*, he shall not say, *in hoc erratum est, &c.* but *unde queritur diversimodo sibi falsum judicium factum fuisse judicium in hoc, &c.* *Moor*, 73. 2 *Nels. Abr.* 829. If a writ of *false judgment* abate for any fault in the writ, the plaintiff shall not have *scire facias ad audiend' errores*, upon the record certified, because it comes without an original: but if the plaintiff dies, and *false judgment* is given in the inferior court, his heir shall have a *sci. fac. ad audiend' error*, against him who recovered upon that record which is removed into *C. B.*; and where the plaintiff in a writ of *false judgment* is nonsuit, it was formerly a question, whether the other party shall sue execution upon this record so removed against the plaintiff, without suing out a *scire facias*; but it has been adjudged, that he may do it. *Hil.* 23 *Hen. VI.* *New Nat. Br.* 39.

When a record is removed into *C. P.* by writ of *false judgment*, if the party alleges variance between the record removed, and that on which judgment was given, the trial shall be by those who were present in court when the record was made up. 2 *Lutw.* 957. *Stat.* 1 *Edw. III.* c. 4. A man shall not have a writ of *false judgment* but in a court where there are suitors; for if there be no suitors, there the record cannot be certified by them. *New Nat. Br.* 40. Where *false judgment* is given on a writ of *justices*, directed to the sheriff, the party grieved shall have a writ of *false judgment*; although the judgment be for debt, or trespass above the sum of 40s. *Ibid.*

Where a record of a judgment in the county court was vitious, and the judgment reversed in *C. B.* the suitors were ordered to be amerced a mark, and the county clerk fined 5*l.* And if a plaintiff in an inferior court declare for more than 40s. judgment shall be reversed by writ of *false judgment*: but where damages are laid under that sum, costs may make it amount to more. 1 *Mod.* 249. 2 *Mod.* 102. 206.

Upon *false judgment* before bailiffs, or others who hold plea by prescription, in every sum in debt by bill before them a party shall not have a writ of *false judgment*; but a writ of error thereupon. *M. 4 E.* 4. For defaults of tenants for life, in writs of right, &c. writ of *false judgment* lies by him in reversion: and this writ may be brought against a stranger to the judgment, if he be tenant of the land. A judgment shall be intended good till reversed by writ of *false judgment*, &c. See tit. *Accedas ad Curiam, Attaint.*

FALSE LATIN. Before the statute directing law proceedings to be in *English*, if a *Latin* word was significant though not good *Latin*, yet an indictment, declaration, or fine, should not be made void by it: but if the word was not *Latin*, nor allowed by the law,

and it were in a material point, it made the whole vitious. 5 *Rep.* 121. 2 *Nels.* 830.

FALSE NEWS. Spreading false news, to make discord between the king and nobility, or concerning any great man of the realm, is punished by common law, with fine and imprisonment, which is confirmed by statutes *Westm.* 1. 3 *Edw.* I. c. 34. 2 *Rich.* II. stat. 1. c. 5. 12 *Rich.* II. c. 11. See 2 *Inst.* 226. 3 *Inst.* 198.

FALSE OATH, See tit. *Perjury.*

FALSE PLEA, See tit. *Pleading.*

FALSE PROPHECY, See tit. *Prophecy.*

FALSE RETURN. On a false return by a mayor, &c. to a *mandamus*, or by a sheriff, &c. to a writ, a special action on the case will lie. See tit. *Action.*

FALSE TOKENS. Where persons get money or goods into their hands, by forged letters, or other counterfeit means, they are punishable by imprisonment, &c. See tit. *Cheats.*

FALSE VERDICT. A writ of *attaint* lieth, to inquire whether a jury of twelve men have given a false verdict; that so the judgment following thereupon may be reversed. It is allowed in almost every action except in a writ of right. See tit. *Attaint, Jury, Trial.*

TO FALSIFY, To prove a thing to be *false.* *Perk.* 383.

FALSIFYING A RECORD. A person that purchases land of another, who is afterwards outlawed of felony, &c. may *falsify the record*, not only as to the time wherein the felony is supposed to have been committed, but also as to the point of the offence: but where a man is found guilty by verdict, a purchaser cannot *falsify* as to the offence; though he may for the time, where the party is found guilty generally in the indictment, &c. because the time is not material upon evidence. And any judgment given by persons who had no good commission to proceed against the person condemned, may be *falsified* by showing the special matter, without writ of error. Also where a man is *attainted* of treason or felony, if he be afterwards pardoned by parliament, the attainder may be *falsified* by him or his heir, without plea. 2 *Hawk. P. C.* See tit. *Record.*

FALSIFYING A RECOVERY, See tit. *Fine, Recovery.*

FALSIFYING A VERDICT. Where in any real action, there is a verdict against tenant in tail, the issue can never *falsify* such verdict in the point directly tried; but only in a special manner, as by saying that some evidence was omitted, &c. 2 *Ld. Raym.* 1050. See tit. *Trial, New Trial, Jury, Verdict.*

FALSING OF DOOMS, In *Scotch* law, the old term for an appeal: doom is the sentence of a court, and the falsing of dooms is proving the injustice of that sentence.

FALSONARIUS, A forger. *Hoveden,* 424.

FALSO RETURNO BREVIUM, A writ that lieth against the sheriff who hath execution of process, for *false returning* of writs. *Reg. Jud.* 43.

FAMILIA, Signifies all the servants belonging to a particular master; but in another sense it is taken for a portion of land, sufficient to maintain one *family*: it is sometimes mentioned by our writers to be a *hide* of land, which is also called a *manse*; and sometimes *carucata*, or a plough land. *Blount.*

FANATICS. Persons supposing themselves inspired. A general name for *Quakers*, *Anabaptists*, and other sectaries and dissenters from the church of *England*. See stat. 13 *Car. II. c. 6*.

FANATIO, mensis fanationis.] The fawning season or fence-months in *forests*. *Kennet's Gloss.* See tit. *Fence-Month*.

FARANDMAN. *Sax.*] A traveller or merchant stranger, to whom by the laws of *Scotland* justice ought to be done with all expedition, that his business or journey be not hindered. *Skene, c. 104*.

FARDEL OF LAND, fardella terra.] Is generally accounted the fourth part of a *yard land*, but according to *Noy*, (in his *Compleat Lawyer, p. 57.*) it is an eighth part only; for there he says that two *fardels* of land make a *nook*, and four *nooks* a *yard land*.

FARDING DEAL, quadrantata terra.] Is the fourth part of an acre: and besides *quadrantata terra*, we read of *obolata*, *denariata*, *solidata*, and *librata terra*, which probably arise in proportion of quantity from the *farding deal*, as a half-penny, penny, shilling or pound in money, rise in value; and then must *obolata* be half an acre, *denariata* an acre, *solidata* twelve acres, and *librata terra* twelve score acres of land: but some hold *obolata* to be but half a perch, and *denariata* a perch; and there is mentioned *viginti libratas terra vel redditus*, in *Reg. Orig. 94. 248.* whereby it seems that *librata terra* is so much as yields 20s. *per annum*. *Fitz. N. B. 87. Spelm. Gloss.*

FARE, Sax.] A voyage or passage by water; but more commonly the money paid for such passage, in which sense it is now used. See stat. 3 *P. & M. cap. 16*. So for what we pay a hackney or stage coachman for our carriage.

FARINAGIUM, Toll of meal or flour. *Ordin. Insul. de Jersey, 17 Edw. II.*

FARLEU, Is money paid by tenants in the west of *England* in lieu of a *heriot*: and in some manors in *Devonshire*, *farleu* is distinguished to be the best goods; as *heriot* is the best beast, payable at the death of a tenant. *Cowel.*

FARLINGARII, Whoremongers and adulterers. *Sax.*

FARM, OR FERM. Lat. *firma*, from the *Sax. feorme*, i. e. food; and *feorman* to feed or yield victuals.] A large messuage and land, taken by lease under a certain yearly rent payable by the tenant; and in former days, about the time of *William the First*, called the Conqueror, these rents were reserved to the lords in victuals and other necessities arising from the land; but afterwards, in the reign of King *Hen. I.* were altered and converted into money. *Terms de Ley.* A *farm* is most properly called the chief messuage in a village; and it is a collective word, consisting of divers things gathered in one, as a messuage, land, meadow, pasture, wood, common, &c. *Locare ad firmam* is to let or set to *farm*; and the reason of it may be in respect to the firm or sure hold the tenants thereof have above tenants at will. A *farm* in *Lancashire* is called *Ferm-holt*; in the north a *Tack*; and in *Essex* a *Wike*: and *farm* is taken in various ways. *Plowd. 195.*

FARMER, He that holds a *farm*, or is tenant or lessee thereof. *Terms de Ley.* And it is said generally every lessee for life or years, although it be but of a small house and land, is called *farmer*, as he is that occupieth the *farm*: as this word implies no mystery,

except it be that of husbandry, husbandman is the proper addition of a *farmer*. 2 *Hawk. P. C. c.* 23. § 115. No person whatsoever shall take above two *farms* together, and they to be in the same parish, under the penalty of 3s. 4d. a week. *Stats. 25 Hen. VIII. c.* 13. § 14.

FARTHING, Was the fourth part of a *Saxon* penny, as it is now of the *English* penny.

FARTHING OF GOLD, *quasi* fourth thing.] A coin used in ancient times, containing in value the *fourth* part of a *noble*. It is mentioned in the stat. 9 *Hen. V. cap.* 7. where it is ordained, that there shall be good and just weight of the *noble*, *half noble*, and *farthing of gold*, &c.

FARTHING OF LAND, Seems to differ from *Fardingdeal*; for it is a large quantity of land: in a survey book of the manor of *West Slapton* in *Com. Devon* is entered thus: *A. B.* holds six *farthings* of land at 126*l.* *per annum*.

FARUNDEL of land, See tit. *Farding-deal*.

FASIUS. Fr. *faisseau*.] A faggot of wood. *Mong. Angl. tom.* 2. p. 238.

FAST-DAYS, *Days of fasting* and humiliation, appointed to be kept by public authority. There are fixed *days of fasting* enjoined by our church, at certain times in the year, mentioned in ancient statutes, particularly the 2 & 3 *Edw. VI. c.* 19. and 5 *Eliz. c.* 5. And by stat. 12 *Car. II. c.* 14. the 30th of *January* is ordained to be a *day of fasting* and repentance, for the murder of King *Charles I.* Other *days of fasting* which are not fixed, are occasionally appointed by the *king's proclamation*. See *Embring Days, Holidays*.

FASTERMANS, Among the *Saxons* were pledges. *Leg. Edw. Confess. cap.* 38. Vide *Fastingmen*.

FAT, VAT, or WATE, Is a large wooden vessel used by maltsters and brewers, for measuring of malt with expedition, containing eight bushels or a quarter. *Stats. 1 Hen. V. c.* 10. 11 *Hen. VI. c.* 8. It is also a vessel made use of by brewers to run their wort into, and by others for the making of salt at *Droitwich* in the county of *Worcester*.

FATUA MULIER, A whore. *Du Fresne*.

FATUOUS PERSONS, Idiots. See tit. *Lunatics*.

FAUSETUM, A faucet, musical pipe or flute.

FAUTORS, Favourers or supporters of others; abettors of crimes, &c.

FEAL. The tenants by night service did swear to their lords to be *feal* and *leal*, i. e. to be *faithful* and *loyal*. *Spelm. de Parliament*, 59. See *Fealty*.

FEAL AND DIVOT, A right in *Scotland* similar to the right of *turbary* in *England* for *fuel*, &c. See tit. *Common of Turbary*.

FEALTY, *fidelitas*, Fr. *seaulté*, i. e. *fides fidci, obsequii et servitiū ligamen, quo particulariter vassalus domino astringitur*. *Spelm.*] The oath taken at the admittance of every tenant, to be true to the lord of whom he holds his land: and he that holds land by the oath of *fealty*, has it in the freest manner; because all persons that have *fee*, hold *per fidem et fiduciam*, that is, by *fealty* at least. *Smith de Repub. Ang. lib.* 3. c. 8. And *fealty* is incident to all manner of tenures except *frankalmoigne* and tenancy at will. See tit. *Tenures I. 6. et passim*. This *fealty*, which is used in other

nations, as well as *England*, at the first creation of it bound the tenant to *fidelity*; the breach whereof was the loss of his fee.

It is usually mentioned with *homage*, but differs from it; being an obligation permanent, which binds for ever: and these differ in the manner of the solemnity, for the oath of *homage* is taken by the tenant kneeling; but that of *fealty* is taken standing, and includes the six following things, *viz.*

1. *Incolume*, that he do no bodily injury to the lord. 2. *Tutum*, that he do no secret damage to him in his house, or any thing which is for his defence. 3. *Honestum*, that he do him no injury in his reputation. 4. *Utile*, that he do no damage to him in his possession. 5. *Facile*, and 6. *Possible*, that he render it easy for the lord to do any good, and not make that impossible to be done, which was before in his power to do: all which is comprised in *Leg. Hen. I. c. 5.*

Fealty has likewise been divided into *general* and *special*; *general*, to be performed by every subject to his prince; and *special*, required only of such as in respect of their fee, are tied by oaths to their lords. *Grand Custum. Normand.*

By stat. 17 *Edw. II. si. 2.* the form of this oath is appointed, and as now observed, it runs as follows, *viz. I, A. B. will be to you my lord C. true and faithful, and bear to you fealty and faith for the lands and tenements which I hold of you: and I will truly do and perform the customs and services that I ought to do to you. So help me God.* The oath is administered by the lord or his steward; the tenant holding his right hand upon the book, and repeating after the lord, &c. the words of the oath; and then kissing the book. *Terms de Ley.*

The law with respect to *fealty* continues the same as when Lord *Coke* wrote; (see 1 *Inst.* 686. *in note*;) for it does not appear to be varied by stat. 12 *Car. II. c. 24.* or any other statute made since; but it is no longer the practice to exact the performance of *fealty*. In the case of copyholders it is become a thing of course on admitting them to enter a respite of *fealty*; but with respect to such as hold by other tenures it is never thought of. In *Wood's Inst.* 183. it is said that lessees for life or years ought to do *fealty* to their lords for the lands they hold. However it may not be amiss to remember that the title to *fealty* still remains; that it is due from all tenants except tenants in *frankalmoigne*, and such as hold at will or by sufferance, and if required must be iterated at every change of the lord; it differing in this respect from *homage*, which, except in special cases, is only due *once*; that the receiving of it is at least attended with the advantage of preserving the memory of tenures; which though perhaps sufficiently done in the case of copyholds by the admittances and by the payment of fines and quit-rents, and continual render of other services, may be very necessary in cases where *fealty* is the only service due; and lastly, that the law for compelling the performance of *fealty* has provided the remedy by distress, which is an inseparable incident to all services due by tenure, and, in the case of *fealty* cannot, as it is said, be excessive. See 1 *Inst.* 68. a. 103. b. 104. a. b. 152. b. 2 *Inst.* 107. 4 *Co.* 8. b.

FEASTS, Anniversary times of *feasting* and thanksgiving, as *Christmas, Easter, Whitsuntide, &c.* The four feasts which our

laws especially take notice of, are the *feasts* of the *annunciation of the blessed Virgin Mary*, of the *nativity of St. John the Baptist*, of *St. Michael the Archangel*, and of *St. Thomas the Apostle*; (or in lieu of the last, the *birth of our Lord Christ*;) on which quarterly days, rent on leases is usually reserved to be paid. See stats. 5 & 6 *Edw. VI. c. 3.* 12 *Car. II. c. 30.*

FEE, and FEE-SIMPLE. *Tenant in fee simple*, is he which has lands or tenements to hold to him and his heirs for ever. *Litt. c. 1. § 1.*

The word *fee* is sometimes used for the compass or circuit of a lordship or manor, as we say the *lord of the fee*, &c. as well as the particular estate of the tenant: and also for a perpetual right incorporeal; as to have the keeping of prisons, &c. in *fee*. *Bract. lib. 2. c. 5.* *Old Nat. Brev. 41.* And when a rent or annuity is granted to one and his heirs, it is a *fee personal*. *Co. Litt. 1, 2.*

As to the general nature and origin of estates in fee-simple, and the other estates arising therefrom, see this *Dict. tit. Estate, Tenure III. 5.* It is therefore in this place sufficient to inquire.

I. *In what Things one may have a Fee-simple.*

II. *By what Means such an Estate may be acquired.*

III. *By what Words it may be created.*

I. A man may have an estate, in fee-simple of all lands or tenements or other things real. *Co. Litt. 1. b.* Of lordships, advowsons, commons, estovers, and all hereditaments. *Co. Litt. 4. a.* So he may have a fee-simple in things mixed; as in franchises liberties, &c. *Co. Litt. 2. a.*

So if a man grants to another and his heirs all woods, underwoods, timber-trees, or others in such a part of a forest, saving the soil; the grantee has a fee to take *in alieno solo*. *R. 8. Co. 137. b.*

So, in things personal; as in annuity. *Co. Litt. 2. a.* In a dignity granted to him and his heirs. *Co. Litt. 2. a.* In a swan-mark. *7 Co. 17.* In a part or share of the *New River* water. *Ca. Parl. 207.*

So, in the patronage of an hospital, or other thing created *de novo*, in which there was not a precedent estate, a man may have a fee to him and his heirs, qualified in a particular manner: as if a queen consort institutes an hospital, and reserves the patronage *sibi et reginis Anglia succedentibus*. *Ca. Ch. 214.*

But in estates *in esse* before such desultory inheritance, it cannot be: as the duchy of *Cornwall* limited to the prince *et filius regis Anglia primogenitis*, shall not be good, except when limited by act of parliament. *8 Co. 16.*

II. A man may take a fee by descent or by purchase.

In what manner a man may take by descent, see under *tit. Descent*.

With respect to *purchasers*, it is to be noted, that some are incapable of purchasing.

An alien cannot purchase any lands in *England*. *Vaugh. 227. 291. 7 Co. 16, 17, 18. Dyer, 2. pl. 8.* See *Alien*.

All persons attainted of treason or felony are incapable of pur-

chasing. 2 *New Abr.* 249. *Co. Litt.* 8. a. See *Dig. Feud. lib.* 2. tit. 23, 24. *Vigellius*, 242. 350. *Spelm. Gloss.* 214, 215.

If a man be *attainted of felony*, and after purchase land, and dies, the king shall have it by his prerogative, and not the lord of the fee; because his person being forfeited to the king, he cannot purchase but for the king. *Co. Litt.* 2. b.

A monster not having human shape cannot purchase or inherit, but an hermaphrodite shall inherit or purchase *secundum prævalentiam sexus incalcescentis*; one born deaf and dumb may inherit; so may one born deaf, dumb and blind, because it is for their advantage; but they cannot *contract*, because they cannot understand the signs of contracting; an infant, an idiot, and a person of *nonsane memory* may inherit, because the law, in compassion to their natural infirmities, presumes them capable of property; so also an infant or a person of *nonsane memory* 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 their 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; if at full age, or after recovery of his memory they agree thereto, they cannot avoid it: but if they die during minority or lunacy, the heirs may avoid it; for they shall not be subject to the contracts of persons who wanted capacity to contract; so, if after his memory recovered, the lunatic or person *non compos* die without agreement to the purchase, their heirs may avoid it. *Co. Litt.* 2. 8. *2 Vent.* 303. See tit. *Estate*.

A *feme covert* is capable of purchasing; for such an act does not make the property of the husband liable to any disadvantage, nor does it suppose a separate will or power of contracting in the wife; but here the will of the wife is supposed the mind of the husband, (he not objecting,) since no man is supposed not to assent to that which is for his benefit; but in this case the husband may disagree, and it shall avoid the purchase. *Co. Litt.* 3. a. See tit. *Baron and Feme*.

By the stat. 11 & 12 *Wm. III. c. 4. papists* are disabled from purchasing lands, &c. See tit. *Papist*.

Persons capable of purchasing may gain a fee-simple by *feoffment*; or by *fine*, or *common recovery*, which are of the nature of a feoffment upon record; or by *grant*, or by *exchange*, *release*, or *confirmation*, which are in the nature of grant; or by *bargain and sale*; or by *covenant to stand seised*; or by *devise*. See tit. *Estate*.

So a man may gain a fee by wrong; as by *disseisin*, *abatement*, or *intrusion*. See those titles.

III. It is the word *heirs* makes the inheritance; and a man cannot have a greater estate. *Litt.* 1. To have *fee-simple* implies, that it is without limitation to what heirs, but to heirs generally; though it may be limited by act of parliament. 4 *Inst.* 206. If one give or grant land to *J. S.* and his heirs; and if he die without heirs, that *J. D.* shall have it to him and his heirs: by this *J. S.* hath a *fee-simple*, and *J. D.* will have no estate. *Dyer*,

4. 33. This means by parol, with livery and seisin, or by deed, &c. but not by will.

Where land is given or granted by fine, deed or will, in possession, reversion, or remainder, to another and his heirs; it will be a *fee-simple*. *Plowd.* 143. And if land be granted to a man and his heirs, *habendum* to him for life only, and livery of seisin is made, it is a *fee-simple* estate, because a fee is expressed in the grant. 2 *Rep.* 23.

A lease is granted to one for a term of years, and after that the lessee shall have the land to him and his heirs by the rent of 10l. a year; if the grantor make *livery* upon it, it is a *fee-simple*; otherwise but for years. *Co. Litt.* 217. Where lands are granted to *A.* for life, remainder to *B.* for life, the remainder to the right heirs of *A.*, here *A.* hath a *fee-simple*. 20 *Hen. VI.* 35. *Bro. Est.* 34, 35. A gift or grant to a man's wife during life, after to him in tail, and after to his right heirs; he will have a *fee-simple* estate. 2 *Rep.* 91.

If lands are granted to a man and his successors, this creates no *fee-simple*; but if such a grant be made to a corporation, it is a *fee-simple*; and in case of a sole corporation, as a bishop, parson, &c. a *fee-simple* is to them and their successors. *Co. Litt.* 1. b. *Wood*, 119. An estate granted to a person, to hold to him for ever, or to him and his assigns for ever, is only an estate for life; the word *heirs* being wanted to make it *fee-simple*: but in *wills*, which are more favoured than grants, the *fee-simple* and inheritance may pass without the word *heirs*. *Co. Litt.* 19. 9.

And by deed of feoffment a *fee-simple* may be created, which would be an estate-tail by will; as where lands are given to another, and his heirs male, &c. without the word *body*. *Hob.* 32. A gift to a man and his children, and their heirs, is a *fee-simple* to all that are living. *Co. Litt.* 8. *Litt. Rep.* 6.

A feoffment to *B. et heredibus*, without saying *suis*, gives him a *fee-simple*. *Co. Litt.* 8. b. So to a son and the heirs of his father. *Semb. Co. Litt.* 220. b. So to *B. et liberis suis*, and their heirs; if he has issue, it gives them a joint estate in fee. *Co. Litt.* 9. a. So to *B. heredibus et successoribus suis*, gives a fee. *Co. Litt.* 9. a.

So a grant to the king *in perpetuum* gives him a fee, without the words; *his heirs or successors*, for he never dies. *Co. Litt.* 9. b. So a feoffment to a corporation aggregate *in perpetuum* gives a fee; for it never dies. *Co. Litt.* 9. b. 1 *Roll.* 832. l. 55.

Or, to a corporation sole, to be held in *frankalmoine*. *Co. Litt.* 9. b. 1 *Roll.* 833. l. 5. So if *A.* re-ensfeoffs *B. adeo plenè* as *B.* ensfeoffed him, he has a fee without the word *heirs*. *Co. Litt.* 9. b. This must mean where *A.* had an estate in fee of the feoffment of *B.* 1 *Roll.* 833. l. 12. So a grant to the church of *B.* gives a fee, without the words *heirs or successors*. 1 *Roll.* 833. l. 3.

And a limitation to the right heirs of *B.* gives a fee, without the words and their heirs. 1 *Roll.* 133. l. 16. So a fee may be given without the words, *his heirs*, by fine *sur conusance de droit come ceo*, &c. *Co. Litt.* 9. b. or by a common recovery. *Co. Litt.* 9. b.

So a fee passes without the words *his heirs*, where a man gives land with his daughter, &c. in *frankmarriage*. *Co. Litt.* 9. b. If

a parcener, or joint-tenant releases to his companion. *Co. Litt.* 9. b. If the lord, &c. releases to the tertehtant, which enures by way of extinguishment. *Co. Litt.* 9. b. If a man releases a mere right; as where a disseisee releases to the disseisor all his right. *Co. Litt.* 9. b.

So if a rent be granted upon partition, for owelty (or equality) of partition. *Co. Litt.* 9, 10. So if a peer be summoned to parliament by writ, he has a fee in his dignity, without the word *heirs*. *Co. Litt.* 9. b. So, by the forest law, if the king at a justice seat, grants to another an *assart in perpetuum*, without more, he has a fee. *Co. Litt.* 10. a. So, by custom, a grant of a copyhold, *sibi et suis*, or *sibi et assignatis*, may give the inheritance. 4 *Co.* 29. b.

A *fee-simple* determinable upon a contingency, is a *fee* to all intents, though not so durable as absolute *fee*. *Vaugh.* 273. But see tit. *Executory Devise*.

In pleading estates in fee-simple, they may be alleged generally; but the commencement of estates tail, and other particular estates, must regularly be shown. *Co. Litt.* 303. The fee-simple estate, being the chief and most excellent; he who hath it in lands or tenements, may give, grant, or charge the same by deed or will at his pleasure; or he may make waste or spoil upon it: and if he bind himself and his heirs to warranty, or for money by obligation, or otherwise, and leave such land to the heir, it shall be charged with warranty and debts: also the wife of a man that is seised of such an estate, shall be endowed; and the husband of a woman having this estate, shall be tenant by the curtesy. *Co. Litt.* 273. *Dyer*, 330. *Perk.* § 236.

Though fee-simple is the most ample estate of inheritance, it is subject to many encumbrances; as judgments, statutes, mortgages, fines, jointures, dower, &c. And there is a fee-simple *conditional*, where the estate is defeasible by not performing the condition; and a *qualified fee-simple*, which may be defeated by a limitation, &c. This is called a *base fee*, upon which no reversion or remainder can be expectant. *Co. Litt.* 18. 10 *Rep.* 97.

See further on this subject, tit. *Descent, Estate, Executory Devise, Tenure, Wills, &c.*

*FEE EXPECTANT. *Feudum expectativum.*] See *Expectant*.

FEE-TAIL, See tit. *Tail*.

FEE-FARM, *feodi firma.*] Or *fee-farm rent*; is when the lord, upon creation of the tenancy, reserves to himself and his heirs, either the rent for which it was before let to farm, or was reasonably worth, or at least a fourth part of the value; *without homage, fealty, or other services*, beyond what are especially comprised in the feoffment. 2 *Inst.* 44. By *Fitzherbert*, a third part of the yearly value of the land may be appointed for the rent, where lands are granted in *fee farm, &c.* *Fitz. N. B.* 110. And Lord *Coke* says, *fee-farm* rents may be one half, a third, or fourth part of the value. *Co. Litt.* 143. See 2 *Comm.* 43. *Doug.* 627. *in note*, and the notes to 1 *Inst.* 143.

These *fee-farm* rents seem to be more or less, according to the conditions or consideration of the purchase of the lands out of which they are issuing. It is the nature of *fee-farm*, that if the

rent be behind and unpaid for the space of two years, then the feoffor or his heir may bring an action to recover the lands, &c. *Brit. c. 66. num. 4.* See tit. *Cessavit.*

Feodi firma appellatur, cum quis, ex dono vel concessione alterius, prædia tenuerit sibi et hæredibus suis reddendo vel dimidium, vel tertiam, vel ad minus quartam partem veri valoris. Tenens hujusmodi ad nulla servitia obligatur, nisi quæ in ipsâ chartâ continentur: exceptâ fidelitate, quæ omnibus tenuris incumbit. *Spelm. Gloss. 221.*

† FEE-FARM RENTS OF THE CROWN. The *fee-farm* rents remaining to the kings of England from their ancient demesnes, were many of them alienated from the crown in the reign of King Charles II. By stats. 22 Car. II. c. 6. 22 & 23 Car. II. c. 24. (explained by stat. 10 Ann. c. 18.) the king was enabled by letters patent to grant *fee-farm* rents due in right of his crown, or in right of his duchies of Lancaster and Cornwall, except quit-rents, &c. to trustees to make sale thereof, and the trustees were to convey the same by bargain and sale to purchasers, &c. who may recover the same as the king might. But it has been observed, that men were so very doubtful of the title to alienations of this nature, that while these rents were exposed to sale for ready money, scarce any would deal for them, and they remained unsold: but what made men earnest to buy them, was the stop upon some of his majesty's other payments, which occasioned persons to resort to this as the most eligible in that conjuncture: no tenant in tail of any of the said rents, is enabled to bar the remainder. See further, tit. *Counties Palatine.*

FEES, Certain perquisites allowed to officers in the administration of justice, as a recompense for their labour and trouble; ascertained either by acts of parliament, or by ancient usage, which gives them an equal sanction with an act of parliament. 2 *New Abr.* 463.

I. In what Cases Fees are due.

II. At what Time they may be demanded.

I. At common law no officer, whose office related to the administration of justice, could take any reward for doing his duty, but what he was to receive from the king. *Co. Litt.* 368. 2 *Inst.* 176. 208, 209.

And this fundamental maxim of the common law is confirmed by *Westm. 1. cap. 26.* which enacts, "That no sheriff, or other king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and that he who so doth shall yield twice as much, and shall be punished at the king's pleasure."

This statute comprehends escheators, coroners, bailiffs, gaolers, the king's clerk of the market, aulnager, and other inferior ministers and officers of the king, whose offices do any way concern the administration or execution of justice. 2 *Inst.* 209.

And so much hath this law been thought to conduce to the honour of the king and welfare of the subject, that all prescriptions whatsoever, which have been contrary to it, have been holden void; as where by prescription the clerk of the market claimed

certain fees for the view and examination of all weights and measures, and it was held merely void. 4 *Inst.* 247. *Moor*, 523. 2 *Inst.* 209. 2 *Roll. Abr.* 226.

But it hath been holden, that the fee of 20*d.* commonly called the bar fee, which hath been taken time out of mind, by the sheriff, of every prisoner who is acquitted; and also the fee of one penny, which was claimed by the coroner of every *visne*, when he came before the justices in *cyre*, are not within the meaning of the statute, because they are not demanded by the sheriff or coroner for doing any thing relating to their offices, but claimed as perquisites of right belonging to any of them. 2 *Inst.* 210. *Staundf. P. C.* 49.

Also it is holden by Lord *Coke*, that within the words of the statute 34 *Edw. I.* which are, "No tallage or aid shall be taken or levied by us or our heirs in our realm, *without the King's will and assent* of archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land;" no new offices can be erected with new fees, or old offices with new fees; for that is a tallage upon the subject, which cannot be done without common assent by act of parliament. 2 *Inst.* 533.

Yet it is holden, that an office erected for the public good, though no fee is annexed to it, is a good office; and that the party, for the labour and pains which he takes in executing it, may maintain a *quantum meruit*, if not as a fee, yet as a competent recompense for his trouble. *Moor*, 808.

All fees allowed by act of parliament become established fees; and the several officers entitled to them may maintain *action of debt* for them. 2 *Inst.* 210. All such fees as have been allowed by the courts of justice to their officers, as a recompense for their labour and attendance, are established fees; and the parties cannot be deprived of them without an act of parliament. *Co. Litt.* 368. *Prev. Chan.* 551.

Where a fee is due by custom, such custom, like all others, must be reasonable: and therefore where a person libelled in the spiritual court for a burying fee due to him for every one who died in his parish, though buried in another; the court held this unreasonable, and a prohibition was granted. *Hob.* 175. The plaintiff brought an action on the case for fees due to him as usher of the black rod, and obtained a verdict. *Stra.* 747. Justices in sessions have no authority to fix the bailiffs' fees for arrest in civil cases; nor would the court of *K. B.* allow more than the usual fee of one guinea, though a larger sum had in fact been paid for years under an order of such justices. 3 *Term Rep. K. B.* 417.

As to the fees of sheriffs for executions, by stat. 29 *Eliz. cap. 4.* it is enacted, "That it shall not be lawful for any sheriff, &c. nor for any of their officers, &c. by colour of their office, to take of any person, directly or indirectly, for the serving and executing of any extent or execution upon the body, lands, goods or chattels of any person, more recompense than in this present act appointed, i. e. twelve-pence of and for every twenty shillings where it exceedeth not one hundred pounds; and six-pence of and for every twenty shillings, over and above the said sum of 100*l.* that he or they shall so levy or extend, and deliver in execution, or take the body in execution for; upon pain, that the person offending shall forfeit, to the party grieved, his treble damages; and

shall forfeit the sum of 40*l.* for every time that he, they, or any of them, shall do the contrary.

Nothing but the poundage can be taken by the sheriff under this stat. 29 *Eliz. c. 4.* In actions on simple contract, and judgment, for a debt certain, as the expenses of levying, must be made by the plaintiff; he is the party grieved by any overcharge of the sheriff: but if the judgment be for a penalty, the defendant must pay the expenses, and in such case he is the party grieved by such overcharge. *Term Rep. K. B. 148. 157.*

No fee shall be taken for a report upon a reference from any court. St. 1 *Jac. I. c. 10.* Certain fees of sheriffs settled. St. 3 *Geo. I. c. 15.* See tit. *Sheriff.* Fees on *nisi prius* records out of the exchequer to be the same as on other records. St. 23 *Geo. II. c. 26. § 10.* Fees of justices' clerks to be regulated. St. 26. *Geo. II. c. 14. 27 Geo. II. c. 16.*

By 46 *Geo. III. c. 82. & 47 Geo. III. st. 1. c. 51.* for *Great Britain*, and 48 *Geo. III. c. 56.* for *Ireland*; the fees to the officers of the customs in the several ports of the United Kingdom are abolished, and their hours of attendance regulated.

II. It is extortion for any officer to take his fee before it is due; and therefore where an under-sheriff refused to execute a *capias ad satisfaciendum* till he had his fees, the court held, that the plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indict him for extortion. *Co. Litt. 368. 10 Co. 102. a. 1 Salk. 330.*

Officer must obey a writ, though fees unpaid. *Stra. 814.* Process must be obeyed though fees are not tendered. *Stra. 1262.* If a *habeas corpus ad subjiciendum* be directed to a gaoler, he must bring up the prisoner although his fees were not paid him; and he cannot excuse himself of the contempt to the court, by alleging that the prisoner did not tender him his fees. 1 *Keb. 272. pl. 57.* So as to a *habeas corpus ad faciendum et recipiendum.* *March, 89. 2 Keb. 280. 2 Inst. 178. 1 Keb. 566. cont.*

But if the gaoler brings up the prisoner by virtue of such *habeas corpus*, the court will not turn him over till the gaoler be paid all his fees; nor, according to some opinions, till he be paid all that is due to him for the prisoner's diet: for that a gaoler is compellable to find his prisoner sustenance. See 1 *Roll. Ref. 338. Co. Litt. 295. 9 Co. 87. Plowd. 68. a. 2 Roll. Abr. 32. 2 Jones, 178.*

If a person pleads his pardon, the judges may insist on the usual fee of gloves to themselves and officers, before they allow it. *Fitz. Coron. 294. Pulton de Pace, 88. Keling, 25. 2 Jones, 56. 1 Sid. 452.*

If an erroneous writ be delivered to the sheriff, and he executes it, he shall have his fees, though the writ be erroneous. 1 *Salk. 332.* It seems to be laid down in the old books as a distinction, that upon an extent of land upon a statute, the sheriff is to have his fees, so much *per pound* according to the statute immediately; but that upon an *elegit* he is not to have them till the *liberate.* *Poph. 156. Wineh. 51. S. P.*

Fees are now recoverable by an action for money had and received, which has been introduced in lieu of an assise. Money given to *A.* and claimed by *B.* as perquisites of office, cannot be recovered by *B.* in such action, unless such perquisites be known and

accustomed fees, such as the legal officer could have recovered from *A.* 6 *Term Rep. K. B.* 681. 683.

FEES OF ATTORNEYS AND OFFICERS, Are considerations allowed them as a recompense for their labour: and in respect to officers, they are granted over and above their salaries, to excite them to diligence in executing their offices. They differ from *wages* which are paid to servants for certain work and labour done in a certain space; whereas *fees* are disbursed to officers, &c. for the transacting of business which occasionally occurs. If a client, when his business in court is despatched, refuseth to pay the officer his court fees; the court on motion will grant an attachment against him, on which he shall be committed until the *fees* are paid. 1 *Lill. Abr.* 598. Ecclesiastical courts have not power to establish *fees*; but if a person bring a *quantum meruit in B. R. &c.* for *fees*, and the jury find for him, then they become established *fees*. 1 *Salk.* 333.

A solicitor in chancery may exhibit his bill for his fees for business done in that court; and so he may where the business is done in another court, if it relates to another demand the plaintiff makes in chancery. 1 *Vern.* 203. 2 *Chan. Ca.* 135.

Action on the case lies for an attorney for his *fees*, against him that retained him in his cause: And attorneys are not to be dismissed by their clients, till their *fees* are paid. 1 *Lill.* 142. But attorneys are not to demand more than their just *fees*; nor to be allowed *fees* to counsel without tickets, or the signature of counsel, &c. stat. 3 *Jac.* I. c. 7. An attorney may have action of debt for his *fees*, and also of counsel, and costs of suit: as a counsellor is not bound to give counsel till he has his *fee*, it is said he can have no action for it: Though it has been held otherwise. *Fitz. N. B.* 121. *Brownl.* 73. 31 *Hen.* VI. c. 9.

See further, as connected with the subject of fees, this *Dict.* tit. *Bribery, Extortion*, and also tit. *Barrister, Sheriff, Attorney, Coroner, &c.*

FEIGNED ACTION, See tit. *Faint Action.*

FEIGNED ISSUE. If, in a suit in equity, any matter of fact is strongly contested, the court usually directs the matter to be tried by jury; especially such important facts as the validity of a will, or whether *A.* is the heir at law to *B.*, or the existence of a *modus decimandi*, or real and immemorial composition for tithes. But as a jury cannot be summoned to attend a court of equity, the fact is usually directed to be tried in the court of king's bench, or at the assises, upon a *feigned issue*. For this purpose, a feigned action is brought, wherein the pretended plaintiff declares that he laid a wager of *5l.* with the defendant, that *A.* was heir at law to *B.*; then he avers he is so; and brings his action for the *5l.*; the defendant allows the wager, but avers that *A.* is not the heir to *B.*, and thereupon that issue is joined, which is directed out of chancery to be tried: and thus the verdict of the jurors at law determines the fact in the court of equity. 3 *Comm.* 452. If it is a matter of great difficulty and consequence, the direction may be for a trial at bar, with leave of the court. See tit. *Chancery, Equity.*

Trying a feigned issue without the consent of the court, is a contempt of court: and after such a trial, they will stay the proceedings. 4 *Term Rep. K. B.* 402.

FELAGUS, *quasi fide cum eo ligatus.*] A companion, but particularly a friend, who was bound in the *deccenary* for the good behaviour of another. In the laws of king *Ina*, it is said, if a murderer could not be found, &c. the parents of the person slain should have six marks, and the king forty; if he had no parents, then the lord should have it. *Et si dominus non haberet, felagus ejus LL. Ina. cap. 15.*

FELD, Is a *Saxon* word, signifying *field*; and in its compound it signifies wild, as *feld honey*, is wild honey, &c. *Blount.*

FELE HOMAGERS, Were faithful subjects; from the Sax. *fai*, i. e. *fides*.

FELO DE SE, One that commits felony by laying violent hands upon himself, or commits any unlawful malicious act, the consequence of which is his own untimely death. See tit. *Homicide III. 1.*

FELONS' GOODS. The statute *de prerogativa regis*, 17 *Edw. II. c. 1.* grants to the king, among other things, the goods of felons and fugitives. If the king grant to a man and his heirs *felons' goods*, the grantee cannot devise them, &c. on the stat. 32. *Hen. VIII. c. 1.* because they are not of a yearly value; but where a person is seised of a manor, to which they are appendant, it is otherwise, for they will pass as appurtenant. 3 *Reft. 32.* See tit. *Flight, Forfeiture.*

FELONY.

FELONIA.] A term of law including, generally, all capital crimes below treason. 4 *Comm.* 98. This word is of feudal original; but as to the derivation of which authors differ. Some deduce it, fancifully enough as it seems, from *felos Gr.* an impostor; from *fallo, Lat.* to deceive; and *Coke* (1 *Inst.* 391.) says it is *crimen felleo animo perpetratum*. All, however, agree, that it is such a crime as occasions a forfeiture of the offender's lands or goods; this therefore gives great probability to *Spelman's* derivation from the *Teutonic* or *German fee*, a feud or fief, and *lon*, price or value. *Spelm. in verb. Felon.* Felony according to this derivation, is then the same as *pretium feudi*; the consideration for which a man gives up his fief or estate; as in common speech it is said, such an act is as much as one's life or estate is worth. In this sense, it will clearly signify the feudal forfeiture, or rather the act by which an estate is forfeited, or escheats to the lord. See 4 *Comm.* 95.

FELONY, In the general acceptance of law, comprises every species of crime which occasioned, at common law, the forfeiture of lands or goods. This most frequently happens in those crimes for which a capital punishment, either was or is liable to be inflicted: for those felonies which are called clergyable, or to which the benefit of clergy extends, were anciently punished with death in lay or unlearned offenders, though now by the statute law that punishment is for the first offence universally remitted. See this *Dict. tit. Clergy, Benefit of.* Treason itself (says *Coke*, 2 *Inst.* 15.) was anciently comprised under the name of felony. And not only all offences now capital are in some degree or other

felony; but this is likewise the case with some other offences, which are not punished with death; as suicide, where the party is already dead: homicide by chance-medley, or in self-defence; and petty larceny or pilfering; all which are, strictly speaking, felonies, as they subject the committers of them to forfeitures. So that upon the whole the only adequate definition of felony seems to be this, viz. "An offence which occasions a total forfeiture, of either lands or goods, or both, at the common law; and to which, capital or other punishment may be superadded, according to the degree of guilt." 4 *Comm.* 94.

As felony may be without inflicting capital punishment, so it is possible that capital punishment may be inflicted for an offence which is no felony: as in case of *heresy* by the common law, which though capital, never worked any forfeiture of lands or goods, an *inseparable* incident to felony. 3 *Inst.* 43. Of the same nature was the punishment of standing mute, which at common law was capital, but without any forfeiture, and was therefore no felony. In short, the true criterion of felony is forfeiture, for in all felonies which are punishable by death, the offender loses all his lands in fee-simple, and also his goods and chattels; in such as are not so punishable, his goods and chattels only. 1 *Inst.* 391.

The idea of felony is so generally connected with that of capital punishment, that it seems hard to separate them; and to this usage the interpretations of law now conform. For if a statute makes any new offence *felony*, the law implies that it shall be punished with death, (viz. by hanging,) as well as by forfeiture, unless the offender prays the benefit of clergy. *Hawk. P. C. i. c. 41. § 4. ii. c. 48.* So where a statute decrees an offence to undergo judgment of life and member, the offence becomes a felony, though that precise word be omitted; but the words of the statute must not in such case be the least doubtful or ambiguous. 1 *Hawk. P. C. c. 41. § 1, 2.*

Under the word *felony* in commissions, &c. is included *petit* treason, murder, homicide, burning of houses, burglary, robbery, rape, &c. chance-medley, *se defendendo* and *petit* larceny. All felonies punishable according to the course of the common law, are either by the common law, or by statute. Piracy, robbery, and murder *on the sea*, are punishable by the civil and statute law. 1 *Inst.* 391.

Felony, by the common law, is against the life of a man; as murder, manslaughter, *felo de se, se defendendo*, &c. Against a man's goods, such as larceny, and robbery: against his habitation, as burglary, arson, or house-burning: and against public justice, as breach of prison. 3 *Inst.* 31.

It is not very easy to recapitulate the vast variety of offences which are made felony, by the almost innumerable statutes which have been from time to time found necessary, to restrain mankind within those bounds which the security of society requires.

A general list is here subjoined of *felonies, by statute; within clergy*, and *without*. For the particulars relative to each offence, this *Dict.* may be consulted under the proper titles; see particularly, tit. *Larceny, Robbery, Accessary.*

FELONIES WITHIN CLERGY. *Armour*, the king's, embezzling. *Assaults*, with intent to spoil persons' dress. *Bail*, personating;

before commissioners. *Bank paper*, forging or preparing. *Bigamy*. *Bills of Exchange*, foreign forging. *Bridges*, destroying, several specified in different statutes. *Burning* ricks of corn, hay, &c. *Cattle*, sheep, &c. killing in the night maliciously, or slaughtering horses without notice. *Cloth*, stealing from tenters, 3d offence. *Collieries*, destroying engines to drain. *Commons*, destroying enclosures of. *Copper*, removing from a house to steal it, assisting therein, or buying it when stolen. *Corn*, destroying granaries; 2d off. *Customs*; harbouring smugglers and assisting to run goods. *Dikes*, cutting in marsh land. *Fishing* in enclosed pond, &c. with intent to steal, or buying stolen fish. *Foreign state*, going out of the realm to serve without taking the oath of allegiance. *Forgery* of bank bills, foreign bills, customs' debentures, stamps for marking plate, &c. *Gaoler*, forcing a prisoner to become an approver; (impeacher.) *Hawk*, stealing. *Hunting*, in the night or in disguise. *Jewels* and *plate* stolen, receiving of. *Iron bars* fixed to buildings, stealing. *King*, or his council, conspiring to destroy. *Labourers*; confederacy of masons against the statute of labourers. *Lead*; entering blacklead mines with intent to steal; stealing lead affixed to buildings; or buying or receiving it when stolen. *Locks*, floodgates, sluices or banks, destroying. *Maiming* another. *Marriage*, clandestine, solemnizing. *Miscarriage*, procuring. *Money*; exporting silver, importing false money, blanching copper, putting off counterfeit money, or counterfeiting copper money, or tokens issued by the bank. *Mutiny* and desertion in seamen or soldiers. *Palaces* of the king, entering with intent to steal. *Pewter* stolen, buying or receiving. *Plague*, persons infected with, going out of doors. *Polygamy*, or bigamy. *Post-office*, frauds in, as to postage of letters. *Process*, opposing execution of, in pretended privileged places. *Public works*, injuring or damaging. *Records*, withdrawing or secreting. *Rescuing prisoners* for treason or felony; or offenders against statutes concerning spirituous liquors; or offenders condemned to hard labour; or bodies of murderers. *Robbery*, of furniture from lodgings; assaulting with intent to rob. *Rogues*, incorrigible, escaping from the house of correction or offending a second time. *Servants*, taking their master's goods at his death; assaulting master woolcomber or weaver; embezzling goods to the value of 40s. *Sheep*, exporting alive; 2d off. *Ships*, destroying; forcibly preventing the lading, sailing, &c. of ships by seamen, keelmen and others. *Smugglers*, assisting, &c. *Stamp duties*, certain frauds in. *Stolen goods*, buyers or receivers of, or person taking reward to discover. *Stores*, government embezzling. *Trees*, shrubs, &c. destroying in nurseries or gardens to the value of 5s. *Turnpikes*, gates, toll-houses, &c. destroying. *Warrens*, entering in the night and killing conies. *Watermen*, carrying too many passengers, if any drowned. *Woods*, setting fire to.

FELONIES WITHOUT CLERGY. *Accessories*, in certain cases. *Aliens* returning from transportation. *Bail*, personating. *Bank of England*, clerks embezzling notes; altering dividend warrants, &c. paper-makers unauthorized using moulds for notes; (see *post*, *Forgery*.) *Banks* of the sea, destroying. *Bankrupt*, not surrendering; concealing his estate, &c. *Bastard*, murdering, &c. *Black act*, offenders under. *Bleaching grounds*, robbery of

Bridges, wilfully damaging, those of *London*, *Westminster*, and *Fulham*. *Burglary*. *Burning houses*, or barns with corn. *Cattle*, stealing or maiming. *Challenging jurors* above twenty, in felonies ousted of clergy. *Cloth*, stealing from the tenters. *Coal mines*, setting fire to. *Cottons*, selling with forged stamps. *Customs*; smugglers shooting at or wounding officers of the navy or custom-house; harbouring transported offenders; not surrendering on proclamation. *Deer-stealing*; 2d off. *Deeds* enrolled acknowledging in the name of another robbing. *Fences of Commons*, destroying. *Fish ponds*, *Fens*, destroying works for draining of. *Fines*, acknowledging in another's name. *Forgeries* of deeds, transfers of stock, stamps, registers, &c. &c. *Hops*, cutting the binds. *Horse-stealing*. *Judgments*, acknowledging in another's name. *Letters*, threatening, sending; or rescuing offenders so doing. *Linen*, stealing from bleaching grounds; or cutting or destroying. *Mail*, robbing, or stealing letters from post-office. *Maiming*; maliciously lying in wait for that purpose. *Malicious injuries*, viz. shooting at, stabbing, &c. giving medicine to procure miscarriages; setting fire to houses, out-houses, &c. *Marshes*; setting fires to engines for draining. *Mariners* wandering without testimonials, and see stat. 39 *Eliz.* c. 17. § 4. (*post*, *Seaman*.) *Mines*, damaging. *Money*, uttering false money; 3d off. *Murder*. *Mute*, standing on trial for treason or felony. *Northern borders*, thieves and spoilers in *Cumberland*, *Northumberland*, *Westmorland*, and *Durham*. *Outlawry*, for felonies without clergy. *Perjury*, convicts for, escaping, breaking prison, or returning from transportation. *Personating* bail, seamen, pensioners, &c. *Pick-pocket*, of above 12d. value. *Piracy*; under which is included, sailors hindering the captain of a ship from fighting, by forcible restraint. *Poisoning*, of malice prepense. *Popish recusants*, priests and jesuits in certain cases. *Post-office*; robbing mail, secreting letters, &c. *Prisoners* forswearing themselves under insolvent acts, refusing to deliver up, or concealing their effects; escaping from confinement to hard labour; 2d off. *Privy councillors*, attempting to kill. *Quarantine*, neglecting the regulations for performing. *Rape* of a child under 13 years old. *Rescuing convicts* from transportation, or murderers. *Rebels* returning from transportation, their aiders and correspondents. *Recognition* or *recovery*, acknowledging in another's name. *Riots*, and destroying buildings. *Robbery*, of churches, on the highway, in booths in fairs, dwelling-houses, shops, warehouses, coach-houses or stables; on board vessels; in wharfs; in lodgings; if above 12d. value; stealing exchequer orders, bank notes, navy bills, promissory notes, &c. *Sea*; treasons, robberies, murders, &c. upon. *Seamen*, personating to receive their pay. *Ships* of war and others, wilfully destroying. *Shooting* at another. *Silk*; destroying any silk or velvet in the loom, or the tools for manufacturing thereof. *Smuggling*, and assembling armed for that purpose. *Soldiers*; deserting, wandering without testimonials, enlisting in foreign service, or seducing others so to do. *South Sea Company*; servants embezzling their effects. *Stamps* counterfeit-ing. *Stolen goods*, helping to a reward in certain cases. *Stores*, government; embezzling or burning or destroying in dock-yards. *Transportation*, returning from, or being at large in the kingdom

after sentence. *Turnpikes*, gates, weighing engines, locks, sluices, &c. destroying. *Wool*; destroying woollen goods, racks, or tools, or forcibly entering a house for that purpose. *Women*, stealing and marrying. *Wreck* of ships, causing by stealing pumps, &c. stealing shipwrecked goods, or killing shipwrecked persons.

Before the reign of King *Hen. I.* felonies were punished with pecuniary fines; for he was the first who ordered felons to be hanged, about the year 1108. The judgment against a man for felony hath been the same since the reign of that king, *i. e.* that he be hanged by the neck till dead, which is entered *suspendatur per collum, &c.* 4 *Inst.* 124. Felony was anciently every capital crime perpetrated with an evil intention: all capital offences by the common law came generally under the title of felony, and could not be expressed by any word but *felonice*, which must of necessity be laid in an indictment of felony. *Co. Litt.* 391. It is always accompanied with an evil intention; and therefore felony cannot be imputed to any other motive. But the bare intention to commit a felony is so very criminal, that at the common law it was punishable as felony, where it missed of its effect through some accident, and now the party may be severely fined for such an intention. 1 *Hawk. P. C.* c. 23.

Felony is punished with the loss of life, and of lands not entailed, goods and chattels: and felony ordinarily works corruption of blood; unless a statute making an offence felony, ordains it shall be otherwise, as some statutes do. See tit. *Attainder*.

The punishment of a person for felony, by our ancient books, is, 1st. To lose his life; 2dly. To lose his blood, as to his ancestry, and so as to have neither heir nor posterity; 3dly. To lose his goods; 4thly. To lose his lands; and the king shall have *annum, diem et vastum*, to the intent that his wife and children be cast out of the house, his house pulled down, and all that he had for his comfort or delight destroyed. 4 *Rep.* 124. A felony by statute incidentally implies, that the offender shall be subject to the like attainder and forfeiture, &c. as is incident to a felon at common law. 3 *Inst.* 47. 59. 90.

All felonies are several, and cannot be joint; so that a pardon of one felon cannot discharge another; but the felony of one man may be dependent upon that of another, and the pardon of the one by a necessary consequence enure to the benefit of the other, as in cases of principal and accessory, &c. 2 *Hawk. P. C.*

Private persons may arrest felons by their own authority, or by warrant from a justice of peace: and every private person is bound to assist an officer to take felons, &c. 2 *Hawk. P. C.* see tit. *Constable*.

But one ought not to be arrested upon suspicion of felony, except there be *probabilis causa* showed for the ground of the suspicion. 1 *Lill. Abr.* 603. If a felony is not done by a man, but some person else, if another hath probable cause to suspect he is the felon, and accordingly doth arrest him, this is lawful and may be justified. But to make good such justification, there must be in fact a felony committed by some person, without which there can be no ground of suspicion. 2 *Hale's Hist. P. C.* 78. And as to the person, there ought to be a reasonable cause to suspect him, otherwise the arrest will be illegal. See tit. *Arrest, Constable*.

A private man arresting one for *felony*, cannot justify breaking doors, to take the party suspected; but he doth it at his peril, *viz.* if in truth he be a felon, it is justifiable; but if innocent, then it is not. To prevent a murder or manslaughter, private persons may break doors open. 2 *Hale*, 82. Officers may break open a house to take a felon, or any person justly suspected of *felony*; and if an officer hath a warrant to take a felon, who is killed in resisting, it is not *felony* in the officer; but if the officer is killed, it is otherwise. *Dalt.* 289.

Persons indicted of *felony*, &c. where there are strong presumptions and circumstances of guilt, are not replevisable; but for larceny, &c. when persons are committed who are of good reputation, they may be bailed. 2 *Hawk. P. C.* The former part of the position must be, with an exception to the power of the court of *king's bench*. See *tit. Bail*.

If one be committed to prison for one *felony*, the justices of gaol delivery may try him for another *felony*, for which he was not committed, by virtue of their commission. 1 *Lill.* 602.

In the highest crime, and in the lowest species of felony, *viz.* in *felit* larceny, and in all misdemeanors, standing mute hath always been an equivalent to conviction. But upon appeals or indictments for other felonies, or *felit* treason, the prisoner was not by the ancient law looked upon as convicted, so as to receive judgment for the felony, but should, for his obstinacy, have received the terrible sentence of *penance*, or *peine fort et dure*. See this *Dict. tit. Mute, Trial*.

Where a married woman commits *felony*, in company with her husband, it shall be presumed to be done by his command, and she shall be excused. 3 *Inst.* 310. See *tit. Baron and Femme VII*.

If a man's horse be going into the ground of another, and he takes it *felleo animo*, not as damage-feasant, it is no finding, but *felony*; but if *A.'s* sheep stray into the flock of *B.* and he drives the same along with his flock, or by mistake shears them, this is not a *felony*; though if he knew them to be another person's, and marks them with his mark, it is an evidence of *felony*. 1 *Hale's Hist. P. C.* 506.

Where one steals another's goods, and a third person feloniously takes them from him, he is a *felon* as to both the others. And when there is a pretence of title to things unlawfully taken, it may be only a trick to colour *felony*; and the ordinary discovery of a felonious intent is, if the party doth it secretly, or being charged with the goods, denies it. 1 *H. P. C.* 507. 509. If a person to whom goods are delivered on a pretended buying them, runs away with them, it is *felony*; and a guest stealing plate set before him at an inn, &c. is *felony*; also persons who have the charge of things, as a servant of a chamber, &c. may be guilty of *felony*: and the least removing of a thing in attempts of *felony*, is *felony*, though it be not carried off. 3 *Inst.* 308. *Raym.* 275.

But goods must not be of a base nature; such as dogs, &c. nor *fera natura*, as deer, hares, &c. except they be made tame, when it will be *felony* to steal them. If any turkeys, geese, poultry, fish in a trunk, &c. are taken away, it is *felony*. 3 *Inst.* 309, 310. Stealing of tame peacocks, is *felony*; so of herons and young hawks in their nests: it is otherwise of pheasants, partridges, co-

nies, &c. although they be so kept that they cannot escape ; if they be not reclaimed, and known. *Jenk. Cent.* 204. As to cats, dogs, monkeys, and the like, though it be not *felony* to take them, trespass lies for them. *Jenk. Ibid.*

FEME COVERT, A married woman ; said to be *covert baron*. See tit. *Baron and Feme*.

FEME SOLE, *Fr.*] A woman alone, that is unmarried. *Feme Sole Merchant* ; a married woman who by the custom of *London* trades on her own account, independent of her husband. See tit. *Baron and Feme, London*.

FENCE, A hedge, ditch, or other enclosure of land for the better manurance and improvement of the same. And where a hedge, and ditch join together, in whose ground or side the hedge is, to the owner of that land belongs the keeping of the same hedge or fence, and the ditch adjoining to it on the other side, in repair and scoured. *Par. Offic.* 188. An action on the case or trespass lies, for not repairing of fences, whereby cattle come into the ground of another, and do damage. 1 *Salk.* 335. Also it is presentable in the court baron, &c. By stat. 9 *Geo. III. c.* 29. destroying fences set up for enclosing commons is made felony, but within benefit of clergy. See this *Dict. tit. Common, Enclosure*.

FENCE MONTH, *mensis fanationis* (or *fonationis*) *mensis prohibitionis*, or *mensis vetitus*.] Is a month wherein female deer in forests, &c. do fawn, and therefore it is unlawful to hunt in forests during that time ; which begins fifteen days before *midsommer*, and ends fifteen days after it, being in all thirty days. *Manw. part. 2. cap.* 131. Stat. 20. *Car. II. cap.* 3. Some ancient foresters call this month the *defence month*, because then the deer are to be defended from being disturbed, and the interruptions of fear and danger. Serjeant *Fleetwood* saith, that the *fence month* hath been always kept with watch and ward, in every bailiwick throughout the whole forest, since the time of *Canutus*. *Fleetwood's Forest Laws, p.* 5. See tit. *Fish*.

FENGELD, *Sax.*] A tax or imposition, exacted for the repelling of enemies. *MS. Antiq.*

FENS, *paludes*.] Low marshy grounds, or lakes for water ; for the draining whereof in this kingdom several statutes have been from time to time enacted, which are chiefly local ; and by the provision of which the destroying of works for the drainage, or fences for the securing them, are punishable as felonies within clergy, and by other penalties. See tit. *Rivers, Sea Banks, Poudike*.

FEOD OR FEUD, See tit. *Tenures I. 1.*

FEODAL, *feodalis, vel feudalis*.] Of or belonging to the feud or *fee*. Stat. 12 *Car. II. cap.* 24.

FEODALITY, Fealty, See tit. *Fealty ; Tenures I. 6.*

FEODARY, OR FEUDARY, *feudatarius*.] An officer of the court of wards, appointed by the master of that court by virtue of the statute 32 *Hen. VIII. c.* 26. whose business it was to be present with the *escheator* in every county at the finding of offices of lands, and to give in evidence for the king as well concerning the value as the tenure ; and his office was also to survey the lands of the ward, after the office found, and to rate it. He did likewise assign the king's widows their dowers ; and receive all the rents of

wards, lands within his circuit, which he answered to the receiver of the court. This office was wholly taken away by the operation of statute 12 *Car. II. cap. 24.* abolishing tenures.

FEODATARY OR **FEUDATARY**, The tenant who held his estate by *feodal* service; and grantees, to whom lands in *feud* or *fee* were granted by a superior lord, were sometimes called *homagers*; and in some writings are termed *vassals*, *feuds* and *feodataries*. See *tit. Tenures I.*

FEODUM, See *Feud*.

FEODUM MILITIS, A knight's *fee*: *feodum laicum*, a lay *fee*, or land held in *fee* of a lay lord. *Kennet's Gloss.* See *tit. Feuds*.

FEOFFMENT, *feoffamentum*, from the verb *feoffare*; *donatio feud.*] A gift or grant of any manors, messuages, lands or tenements, to another in *fee*, to him and his heirs for ever, by the delivery of seisin and possession of the thing given or granted. In every feoffment, the giver or grantor is called the *feoffor*, and he that receives by virtue thereof is the *feoffee*. *Littleton* says, the proper difference between a *feoffor* and a *donor* is, that the one gives in *fee-simple*, the other in *fee-tail*. *Litt. lib. 1. cap. 6.*

Blackstone (2 *Comm.* 399.) defines feoffment to be the gift of any corporeal hereditament to another. The deed of feoffment is our most ancient conveyance of lands; and in records we often find fees given to knights under the phrases of *de veteri feoffamento*, and *de novo feoffamento*; the first whereof were such lands as were given or granted by King *Henry I.* And the others, such as were granted after the death of the said king, since the beginning of the reign of *Henry II.* At common law the usual conveyance was by feoffment, to which delivery (shortly called livery) and seisin were necessary, the possession being thereby given to the *feoffee*; but if livery and seisin could not be made, by reason there was a tenant in possession, the reversion was granted, and the particular tenant attorned. *Co. Litt.* 9. 49. A feoffment is said, in some respects, to excel the conveyance by fine and recovery; it clearing all disseisins, abatements, intrusions, and other wrongful estates, which no other conveyance doth: and for that it is so solemnly and publicly made, it has been of all other conveyances the most observed. *Westm. Symb.* 235. *Plowd.* 554. See this *Dict. tit. Conveyance, Deed*, and 2 *Comm. c.* 20. *Sheff. Touchet. c.* 9. and the notes to the 8vo. edition, 1791.

This conveyance is now but very little used; except where no consideration passes, as in case of trustees of lands for a corporation, &c. See this *Dict. tit. Lease and Release*, as to conveyance by bodies corporate. It is still however a formal, valid, and effectual mode of conveyance: but has been of late years almost entirely superseded by the conveyance by *Lease and Release*. See this *Dict.* under that title, as also *tit. Bargain and Sale, Conveyance, Deed*.

It will be found useful to consider the learning relating to feoffments according to the following division:

- I. *Of what Things a Feoffment may be made.*
- II. *Who may make a Feoffment, and how it is to be made.*
- III. *Of the different Kinds of Livery; with their Effects and Operations.*

I. A feoffment may be of a messuage, land, meadow, pasture, or other corporeal hereditament, and of a moiety, third or fourth part of it; that lies in livery. The deed must contain the words, have granted, bargained, and enfeoffed.

A feoffment may be made of lands, in which a man has no fixed estate; as, if he has twelve acres to be annually assigned in such a meadow; and livery in any acre, which he has at the time of the feoffment, is sufficient. *Co. Litt.* 4. a. 48. b. 2 *Roll.* 10. l. 40—50.

So, if a feoffment be of fifty acres towards the north in such a moor, which contains 100 acres, livery in any of them is sufficient. 2 *Roll.* 11. l. 5. *Dyer*, 372. b.

So, if two manors be divided *alternis vicibus* between parceners, either may make a feoffment of her manor; and the deed ought to comprehend both; and she shall make livery in one *secundum formam chartæ* this year, and in the other the next year. *Co. Litt.* 48. b.

But a feoffment cannot be made of a thing of which livery cannot be given; as, of *incorporeal* inheritances, *rent, advowson, common, &c.* 2 *Roll.* 1. l. 20. Though it be an advowson, &c. in gross. *Cont.* 11 *Hen.* VI. 4. *Acc.* 2 *Roll.* 1. l. 21.

So a feoffment of lands, which are uncertain till a future act, is void; for livery does not operate *in futuro*: as, if *A.* agrees by indenture to convey 20*l.* *per annum* in land to such a use, and 20*s.* *per annum* to such a use, and makes a feoffment of all his lands to the uses in the indenture; it will be void for all but that where livery was made, it not being ascertained which shall be to one use, and which to the other. *R.* 1 *Roll.* 187.

In a deed of feoffment, there must be a good feoffor, that is, one able to grant the thing conveyed by the deed; a feoffee capable to take it; and a thing grantable, and granted in the manner the law requireth. *Co. Litt.* 42. 49. 190.

See further, of what things a feoffment may be made, *Com. Dig. Feoffment*, (A. 2.) *Vin. Abr. Feoffment*, (C.)

II. If a person *non compos* makes a feoffment, and gives livery himself, that is allowed on all hands to be good to bind himself, so that he can by no process or plea avoid the feoffment, and restore himself to the possession; the same law of an idiot; and the reason is, because the investiture being made before the *parces curiæ*, their solemn attestation could not be defeated by the person himself, because it is presumed they are competent judges of the ability of the feoffor to make such feoffment. 2 *Roll. Abr.* 2. *Co. Litt.* 247. 4 *Co.* 125. a. *Show. Parl. Cases*, 153. and see tit. *Idiots and Lunatics*; and *post*, II.

But if an infant makes a feoffment, and makes livery himself, this shall not bind him, but he himself may avoid it by writ of *dum fuit infra ætatem*; yet the feoffment of the infant is not void in itself, as well because he is allowed to contract for his benefit, as that there ought to be some act of notoriety to restore the possession to him equal to that which transferred it from him. 4 *Co.* 125. 2 *Roll. Abr.* 2. 8 *Co.* 42, 43. *Whittingham's case*.

Yet if an infant makes a feoffment, and a letter of attorney to make livery, that is void; so if a person *non compos* makes a sur-

render or release, this is void in law; so if he makes a letter of attorney to give livery: but the heir at law after the death of the person of *non-sane* memory, or idiot, may avoid his feoffment; and so may the king upon an office found of his lunacy during his life. 8 Co. 45. Co. Litt. 247. a. 4th Co. 125. a. 2 Roll. Abr. 2. Show. Parl. Cases, 153.

There must be livery of seisin in all feoffments, and gifts, &c. where a corporeal inheritance or freehold doth pass; and without livery, the deed is no feoffment, gift or demise. Litt. 59. 8 Rep. 82. But a freehold may pass without livery, by the stat. 27 Hen. VIII. c. 10. By force of which statute, a feoffment to the use of the feoffor, feoffee, &c. supplies the place of livery and seisin. Wood's Inst. 239.

But a feoffment may not be of such things whereof livery and seisin may not be made; for no deed of feoffment is good to pass an estate without livery of seisin; and if either of the parties die before livery, the feoffment is void. Plowd. 214. 219. Though where a *feme* feoffor made a feoffment of lands with livery in view, and then married the feoffee before the livery was executed by actual entry; it was adjudged the livery might be executed after marriage, the feoffee having not only an authority to enter, but an interest passed by the livery in view, and the woman did all on her part to be done. 1 Vent. 186.

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 unreasonable to oblige each person to be present at the execution of the contract, since it may as well be performed by any other person delegated for that purpose by the parties to the contract. Co. Litt. 52. 2 Roll. Abr. 8.

But such delegation, or authority to give or receive livery, must be by deed that it may appear to the court, that the attorney had a commission, to represent the parties that are to give or take the livery, and whether the authority was pursued. Co. Litt. 48. b. 52. a.

If a man be disseised, and makes a deed of feoffment, and a letter of attorney to enter and take possession of the land, and afterwards to make livery, according to the form of the charter, it will be a good feoffment, though he was out of possession at the time of the deed made: for the feoffment takes effect by the livery, and not by the deed. Co. Litt. 48. 52.

A feoffment being a common law conveyance, and executed by livery, makes a transmutation of estate; but a conveyance on the statute of uses, as a covenant to stand seised, &c. makes only a transmutation of possession, and not of estate. 2 Lev. 77. 1 Vent. 378. A feoffment to the use of *A.* for life, the remainder to *B.* If *A.* refuses to take the estate, *B.* shall take presently, because the whole estate is out of the feoffor by livery; but if it had been by covenant to stand seised, he should not have taken till after the death of *A.*, but it would rest in the covenantor, who shall have the use in the mean time. 2 Lev. 77. 2 Leon. Ca. 279. Before the stat. Westm. 1. if a man had made a feoffment in fee, without declaring any use, it should have been to the use of the feoffee; though now by that statute, where no consideration or declaration

of use is expressed, it shall go to the feoffor himself. 2 Leon. 15, 16. If I convey lands by feoffment, which I have on the part of the mother, to J. S. and his heirs, without consideration; the use will be void, and the land shall return again to me and my heirs on the part of the mother; yet if I declare the use to me and my heirs, or upon such feoffment reserve a rent in like manner, it shall go to my heirs at the common law, it being a new thing divided from the land. Hob. 31. Co. Litt. 13. 231. 1 Rep. 100. Dyer, 134. Where a man makes a feoffment, without any consideration; by that the estate and possession passes, but not the use, which shall descend to his heir. 1 Leon. 182.

A feoffment in fee is made to the use of such persons, and for such estates, as the feoffor shall appoint by his will, or to the use of his last will; by operation of law the use vests in the feoffor, and he is seised of a qualified fee, viz. until he makes his will, and declares the uses; and after the will is made, it is only directory, for nothing passes by it but all by the feoffment. 6 Rep. 18. Moor, 567. A feoffment in fee, upon condition, &c. was enrolled, but no livery made; and it was adjudged no good feoffment, but the enrolment shall conclude the person to say that it was not his deed. Pop. 6. 2 Nels. Abr. 844. If a bargain and sale of lands be not enrolled, and the bargainer deliver livery and seisin of the lands *secundum formam chartæ*, &c. it has been held a good feoffment. 1 And. 68.

A feoffment in fee made upon condition not to alien, the condition is void; because it is repugnant to the estate; but if livery is had, the feoffment will be good against the feoffor: and a bond with condition that the feoffee shall not alien, is said to be good. Co. Litt. 206. Cro. Jac. 596. If a man makes a feoffment of lands on condition that the feoffee shall give the lands to the feoffor, and his wife in special tail, remainder to the heirs of the feoffor; and he dies before such gift is made, the feoffee ought to make it as near the intent of the condition as may be, viz. to the wife without impeachment of waste, remainder to the heirs of the body of her husband, on her body begotten, and remainder to the husband's right heirs. In case the feoffor, and his wife both die, the feoffee then should make the estate to the issue, and heirs of the body of his father and mother begotten, remainder to the right heirs of the husband or father. Co. Litt. 219, 220.

Tenant in tail makes a feoffment in fee; the inheritance of the tail is not given to the feoffee by the feoffment, nor is he thereby tenant in tail; for none shall be tenant in tail but he only who is comprehended in the gift made by the donor. But it gives away all the immediate estate the feoffor had. Plowd. 562. Hob. 335. If lessee for life, and the reversioner in fee, make a feoffment in fee by deed, each gives his estate; the lessee his by livery, and the fee from him in remainder. 6 Rep. 15. Lill. Abr. 609. A feoffment was made *habendum* to the feoffee and his heirs, after the death of the feoffor, and livery was made: yet it was held to be a void feoffment, for an estate of freehold in lands cannot begin at a day to come: but where a lessor made a lease for lives, and granted the reversion to another for life, whose estate for life was to begin after the death of the survivor of the other lessees for life, this

was adjudged a good estate in reversion for life. *Hob.* 171. 1 *Nels. Abr.* 846.

If the husband alone make a feoffment of his wife's land, or of both their lands, his wife being on the land and disagreeing to it; this will be good against all persons but the wife: also so it is, if one joint-tenant make a deed of feoffment of the whole land, his companion being then upon it; or if a man disseise me of my lands, and then enfeoff another thereof, whilst I am upon the land, &c. *Perk.* § 219, 220.

Every gift or feoffment of lands made by fraud or maintenance, shall be void; and the disseisee, notwithstanding such alienation, shall recover against the first disseisor his land and double damages; provided he commence his suit in a year after the disseisin, and that the feoffor be pignor of the profits. *Stat.* 1. *Rich.* II. c. 9. See *stat.* 11 *Hen.* VI. c. 3.

See more fully who may make a feoffment, and to whom, 4 *Co.* 125. 8 *Co.* 42. b. *Bac. Abr. Feoffment*, (D). *Vin. Abr. Feoffment*, (E).

III. Livery may be by deed; or in law; which latter is also called *livery within view*.

The livery in deed, is the *actual tradition* of the land, and is made either by the delivery of a branch of a tree, or a turf of the land, or some other thing, in the name of all the lands and tenements contained in the deed: and it may be made by words only without the delivery of any thing; as if the feoffor being upon the land, or at the door of the house, says to the feoffee, *I am content that you should enjoy this land according to the deed; or enter into this house or land, and enjoy it according to the deed;* this is a good livery to pass the freehold, because in all these cases, the charter of feoffment makes the limitation of the estate, and then the words spoken by the feoffor on the land, are a sufficient *indicium* to the people present, to determine in whom the freehold resides during the extent of the limitation; besides, the words, being relative to the charter of feoffment, plainly denote an intention to enfeoff. *Co. Litt.* 48. a. 9 *Co.* 137. b. *Thorowgood's case*, 6 *Co.* 26. *Sharp's case*, 2 *Roll. Abr.* 7. And see *Cro. Jac.* 80. which seems *contra*.

But if a man without any charter, being in his house, says, *I here demise you this house, as long as I live, paying 20l. per annum*, this passes no freehold but only an estate at will; because the word *demise* denotes only the extent of the limitation of the estate intended to be conveyed; but bare words of limitation, without some acts or words to discover the intention of the feoffor to deliver over the possession, are not sufficient to convey the freehold; for if a charter of feoffment be made to a man and his heirs, this, without some other act, or word to give the possession, only passes an estate at will, because the act of delivery is requisite to the perfection of the charter; but besides the charter of feoffment, there must be some act or words to deliver over the possession, before the feoffee can enjoy it pursuant to the charter. 6 *Co.* 26. 2 *Roll. Abr.* 7. *Co. Litt.* 48. *Cro. Eliz.* 482. 9 *Co.* 138. *Moor, pl.* 632.

Livery in deed is thus performed.—The feoffor, lessor, or his attorney, (for this may be as effectually done by deputy or attorney as by the principals themselves in person,) come to the land,

or to the house; and there in the presence of witnesses declare the contents of the feoffment or lease on which livery is to be made: and then the feoffor, if it be of land, doth deliver to the feoffee, all other persons being out of the ground, a clod or turf or a twig or bough there growing with words to this effect, "I deliver these to you "in the name of seisin of all the lands and tenements contained in "this deed." But if it be of a house, the feoffor must take the ring or latch of the door, the house being quite empty, and deliver it to the feoffee in the same form; and then the feoffee must enter alone and shut the door, and then open it, and let in the others. 1 *Inst.* 48. *West. Symb.* 251.

If the conveyance or feoffment be of divers lands, lying scattered in one and the same county, then in the feoffor's possession, livery of seisin of any parcel in the name of the rest, sufficeth for all: but if they be in several counties there must be as many liveries as there are counties. *Litt.* § 414. Also if the lands be out on lease, though all be in the same county there must be as many liveries as there are tenants: because no livery can be made in this case but by the consent of the particular tenant; and the consent of one will not bind the rest. *Dyer*, 18.

In all these cases it is prudent and usual to endorse the livery of seisin on the back of the deed; specifying the manner, place, and time, of making it, together with the names of the witnesses. *Co. Litt.* 48.

The livery *within view*, or the livery *in law*, is, when the feoffor is not actually on the land, or in the house, but being in sight of it says to the feoffee, *I give you yonder house, or land, go and enter into the same, and take possession of it accordingly*; this sort of livery seems to have been made at first only at the court-barons, which were anciently held *sub dio*, (in the open air,) in some open part of the manor, from whence a general survey or view might have been taken of the whole manor, and the *partes curiæ* easily distinguished that part which was then to be transferred. *Pollex.* 47. This livery in law cannot be given or received by attorney, but only by the parties themselves. 1 *Inst.* 48.

This latter sort of livery also 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 license or power given him by the feoffor to take possession of it; and therefore, if either the feoffor or feoffee die before livery, and entry made by the feoffee, the livery within the view becomes ineffectual and void; for if the feoffor dies 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 feoffor intended to convey his land, nor had he an authority from the feoffor to take 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 never vested in his ancestor. *Co. Litt.* 48. b. 2 *Roll. Abr.* 3. 7. 1 *Vent.* 186. *Moor.* 85. *Pollex.* 48.

The livery *within view* may be made of lands in another county

than where the lands lie, because the translation of the feud was often made at the court-baron, in the presence of *mares curia*; and these courts being held *sub dio*, the *mares* could have a distinct view of every part of the manor; and therefore were proper to attest this sort of investiture, though the lands were in a different county, for notwithstanding that, they might have been part of the same manor, for which the court was held. *Co. Litt.* 48. b.

This ceremony was first instituted, that the *mares* of the county might, upon any dispute relating to the freehold, determine in whom it was lodged; and from thence be the better enabled to determine in whom the right was. Hence therefore it is, that if a man makes a feoffment, or lease for life, to commence *in futuro*, and makes livery immediately, the livery is void, and only an estate at will passes to the feoffee; for the design of the institution would fail, if such livery were effectual to pass the freehold; for it would be no evidence, or notoriety of the change of the freehold, if after the livery made, the freehold still remained in the feoffor; and the use of the investiture would rather create than prevent the uncertainty of the freehold, and in many cases would put men to fruitless trouble and expense in pursuit of their right; for by that means, after a man had brought his *precipe* against a person, whom he supposed to be tenant to the freehold, and had proceeded in it a considerable time, the writ might abate by the freehold's vesting in another, by virtue of a livery made before the purchase of the writ. Another reason why such future interests cannot be allowed to pass by any act of livery was because no man would be safe in his purchase, if the operation of livery might create an estate, to commence many years after the livery was made; and though they have allowed a future interest, to commence by way of lease, yet that had no such ill effect in making purchases uncertain, because anciently they were under the power of the freeholder, who by recovery might destroy them; and now unless such leases are made upon good considerations, they are fraudulent against a purchaser; and it is not to be presumed that leases at great distances should be purchased for value. *Cro. Eliz.* 451. *2 Vent.* 204. *Co. Litt.* 217. *5 Co.* 94. b.

Hence, by the way, we may account why a freehold in reversion or remainder cannot be granted *in futuro*, though there no livery is necessary to pass it; as where *A.* is tenant for life, remainder to *B.* in fee; *A.* makes a lease for years to *C.* and afterwards grants the land to *D.* *habend'* from *Michaelmas* next ensuing, for life; this grant to *D.* was adjudged void, though *C.* attorned to it after *Michaelmas*, because such future grants create an uncertainty of the freehold; and the tenant of the freehold being the person who is to answer the stranger's *precipe*, and who was answerable to the lord for the services, it were unreasonable to permit him by any act of his own, to prevent or delay the prosecution of their right. *Cro. Eliz.* 451. *2 Vent.* 204. *Co. Litt.* 217. *5 Co.* 94. b. *2 Co.* 55. *Buckler's case.* *2 And.* 29. *Moor.* 428. *Cro. Eliz.* 450. 585. *Hob.* 170, 171. *5 Co.* 94. *1 Roll. Rep.* 261.

In what cases livery may be made within the view, see *Vin. Abr. Feoffment*, (M).—And further, as to the different kinds of livery; *Bac. Abr. Feoffment*, (A). *Com. Dig. Feoffment*, (B). *Vin. Abr. Feoffment*, (E. F.). And this *Dict. tit. Livery of Seisin*.

FERÆ NATURE, Beasts and birds that are wild, in opposition to the tame ; such as hares, foxes, wild geese, and the like, wherein no man may claim a property. Unless under particular circumstances, as where they are confined, or made tame, &c. See titles *Game*, *Propriety*.

FERDFARE, from the Sax *fyrð*, and *fars iter*.] *Significat quietantiam eundi in exercitum. Fleta, lib. 1. c. 47.*

FERDWIT, Sax. *ferd exercitus, et wite pœna*.] Was used for being quit of manslaughter, committed in the army. *Fleta, lib. 1.* It is rather a fine imposed on persons for not going forth in a military expedition ; to which duty all persons who held land, were in necessity obliged : and a neglect or omission of this common service to the public, was punished with a pecuniary mulct called the *ferdwite*. *Cowel.*

FERIAL DAYS, *dies feriales, feriæ*.] According to the *Latin dictionary* are holy days ; but in the stat. 27 *Hen. VI. c. 5.* *Ferial days* are taken for working days ; all the days of the week, except *Sunday*.

FERLINGATA (FERLINGUS AND FERDLINGUS) TERRÆ. A quarter or fourth part of a yard-land.—See titles *Fardel of Land*, and *Fardingdeal*.

FERM, *firma*.] A house and land let by lease, &c. See title *Farm*.

FERMARY, from the Sax. *feorme victus*.] Is an hospital ; and we read of friers of the *firmary*.

FERMISONA, The winter season of killing deer ; as *tempus finguedinis* is the summer season.

FERNIGO, A piece of waste ground where *fern* grows. *Cartular. Abbat. Glaston. MS.*

FERRAMENTUM, *ferramenta*.] The iron tools or instruments of a mill.—*Et reparare ferramenta ad tres carucas, i. e.* the iron work of three ploughs. *Lib. Nig. Heref.*

FERRANDUS, An iron colour particularly applied to horses, which we at this time call an *iron gray*.

FERRY, A liberty by prescription, or the king's grant, to have a boat for passage upon a river, for carriage of horses and men for reasonable toll : it is usually to cross a large river. *Terms de Ley.* A *ferry* is no more than a common highway ; and no action will lie for one's being disturbed in his passage, unless he allege some particular damage, &c. 3 *Mod. Rep.* 294.

A *ferry* is in respect of the landing-place, and not of the water, the water may be to one, and the *ferry* to another ; as it is of *ferries* on the *Thames*, where the *ferry* in some places belongs to the archbishop of *Canterbury*, while the mayor of *London* has the interest of the water ; and in every *ferry*, the land on both sides of the water ought to belong to the owner of the *ferry*, or otherwise he cannot land on the other part. *Sav. 11.* And every *ferry* ought to have expert and able ferrymen, and to have present passage and reasonable payment for the passage. And it is requisite to have one, who has property in the *ferry*, and not to allow every fisherman to carry, and recarry at their pleasure, for divers inconveniences ; and especially when a place is between the divisions of two counties, any felon may be conveyed from one county to another, secretly, without any notice. *Sav. 14.*

A ferryman, if it be on salt water, ought to be privileged from being pressed as a soldier, or otherwise. *Sav.* 11. 14.

Owner of a ferry cannot suppress that, and put up a bridge in its place without license, and writ of *ad quod damnum*; *per Holt*, Ch. J. *Show.* 243. 257. *Cart.* 193. 1 *Salk.* 12.

If a ferry be granted at this day, he that accepts such grant is bound to keep a boat for the public good; *per Holt*, Ch. J. *Show.* 257.

Custom for the inhabitants to be discharged of toll, may have a reasonable beginning by agreement, as that the inhabitants of the town might be at the charge of procuring the grant, and in consideration thereof, one man to find the boat, and take toll; and the inhabitants to pay none. *Show.* 257.

A common ferry was for all passengers paying toll, but the inhabitants of *A.* were toll free. An inhabitant of *A.* may bring an action for taking toll, but not for neglecting to keep up the ferry; because the former is a private right, but the latter a public. But he cannot maintain an action for not passing; for so, any other subject might bring an action, which would be endless; but the taking toll was a special damage, and without special damage he can only indict, or bring information. 1 *Salk.* 12.

An exclusive right to a ferry from *A.* to *B.* does not prevent persons going by any other boat from *A.* directly to *C.*, though it lie near to *B.*, provided this be not done fraudulently, and as a pretence for avoiding the regular ferry. 4 *Term Rep.* K. B. 666.

The not keeping up a ferry, has been held to be indictable. See tit. *Bridge.*

FERSPEKEN, To speak suddenly. *Leg. Hen.* I. c. 61.

FESTA IN CAPPIS, Were some grand holy days, on which the whole *choirs* and *cathedrals* wore caps. *Vita Abbat. S. Alban.* p. 80. 83.

FESTINGMEN. The Sax. *festinman* signifies a surety or pledge; and to be free of *festingmen*, was probably to be free of *frank pledge*, and not bound for any man's forthcoming, who should transgress the law. *Mon. Angl. tom.* 1. p. 123.

FESTING-PENNY, Earnest given to servants when hired or retained in service, so called in some northern parts of England, from the Sax. *festnian*, to *fasten*, or confirm.

FESTUM, A feast. *Festum S. Michaelis*, the feast of *St. Michael*, &c.

FESTUM STULTORUM, The feast of fools. See *Caput anni.*

FEUD, (*deadly*.) See *Deadly Feud.*

FEUDAL AND FEUDARY, See tit. *Feodal and Feodary.*

FEUDBOTE, A recompense for engaging in a *feud*, and the damages consequent; it having been the custom in ancient times, for all the kindred to engage in their kinsman's quarrel. *Sax. Dict.*

FEUDS, See tit. *Tenures I.*

FEU, (sometimes spelt FEW,) A free and gratuitous right to lands, made to one for service to be performed by him according to the proper nature thereof. *Scotch Dict.*

FEW-HOLDING, Is whereby the vassal is obliged to pay to the superior a sum of money yearly. *Scotch Dict.*

Though the Latin word *feudum* was used to denote the feudal holding where the service was purely military, the term *feu* is used in *Scotland* in contradistinction to *ward-holding*, the military tenure of that country, and means that holding where the vassal, in place of military services, makes a return in grain or in money. *Bell's Scotch Law Dict.*

FEW ANNUALS, The rent which is due by the *reddendo* of the property of the ground, before the house was built within burgh. *Scotch Dict.*

FIAR, In *Scotch law*, in opposition to life renter; the person in whom the property of an estate is vested, subject to the life renter's estate. *Bell's Scotch Law Dict.*

FIARS-PRICES, The prices of grain in the different counties of *Scotland*, fixed yearly by the respective sheriffs in the month of *February*, with the assistance of juries: and these regulate the prices of all grain stipulated to be sold at the *fiar* prices; and also all cases where no price has been stipulated. *Bell's Scotch Law Dict.*

FIAT, A short order or warrant of some judge for making out and allowing certain processes, &c. If a *certiorari* be taken out in vacation, and tested of the precedent term, the *fiat* for it must be signed by a judge of the court some time before the *essoinday* of the subsequent term, otherwise it will be irregular: but it is said there is no need for a judge to sign the writ of *certiorari* itself, but only where it is required by statute. 1 *Salk.* 150. See *tit. Certiorari.*

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. And when the king is petitioned to redress a wrong, he endorses upon the petition, "Let right be done the party." *Dyer*, 385. *Stamf. Prærog. Reg.* 22.

FICTION OF LAW, *factio juris*.] Is allowed of in several cases: but it must be framed, according to the rules of law; not what is imaginable in the conception of man; and there ought to be equity and possibility in every legal *fiction*. There are many of these *fictions* in the *civil law*; and by some civilians, it is said to be an assumption of law upon an untruth, for a truth in something possible to be done, but not done. *Godolphin & Bartol.* The *seisin* of the *conusee* in a *fine* is but a *fiction in our law*; it being an invented form of conveyance only. 1 *Lill. Abr.* 610. And a common recovery is *factio juris*, a formal act or device by consent, where a man is desirous to cut off an estate-tail, remainders, &c. 10 *Rep.* 42.

By *fiction of law*, a bond made beyond sea, may be pleaded to be made in the place where not made, *to wit*, in *Islington*, in the county of *Middlesex*, &c. in order to try the same here, without which it cannot be done. *Co. Litt.* 261. And so it is in some other cases; but the law ought not to be satisfied with *fictions*, where it may be otherwise really satisfied; and *fictions in law* shall not be carried farther than the reasons which introduce them necessarily require. 1 *Lill. Abr.* 10. 2 *Hawk.* 320.

FIDEM MENTIRI, Is when a tenant doth not keep that *fealty* which he hath sworn to the lord. *Leg. Hen. I. c.* 53.

FIEF, which we call *fee*, is in other countries the contrary to

chattels: in *Germany*, certain districts or territories are called *fiefs*, where there are *fiefs of the empire*. See this *Dict.* tit. *Fee, Tenures*.

FIERI FACIAS, A judicial writ of execution, that lies where judgment is had for debt or damages recovered in the king's courts; by which writ the sheriff is commanded to levy the debt and damages of the goods and chattels of the defendant, &c. *Old Nat. Brev.* 152. See this *Dict.* tit. *Execution*.

This writ, though mentioned in the stat. *W. 2. 13 Edw. I. c. 18.* is a writ of execution at common law, and is called a *feri facias*, because the words of the writ, directed to the sheriff, are *quod feri facias de bonis et catallis, &c.* and from these words the writ takes its denomination. *Co. Litt.* 290. b.

This writ is to be sued out within a year and a day after judgment; or the judgment must be revived by *scire facias*; but if a *feri facias* sued in time be not executed, a second *feri facias*, or *elegit*, may be sued out; and it is said some years after, without a *scire facias*, provided continuances are entered from the first *feri facias*, which it is also held may be entered after the second *feri facias* taken out, unless a rule is made that proceedings shall stay, &c. *Sid.* 59. 2 *Nels. Abr.* 776. If a man recover a debt against *A. B.* and levy part of it by *feri facias*, and this writ is returned, yet he may take the body in execution by *capias* for the rest of the debt. *Roll. Abr.* 904. The sheriff on a *feri facias* is to do his best endeavours to levy the money upon the goods and chattels of the defendant, and for that purpose to inquire after his goods, &c. And the plaintiff may inquire and search if he can find any, and give notice thereof to the sheriff, who *ex officio* is to take and sell them if he can, or if not, by a writ of *venditioni exponas*. 2 *Shep. Abr.* 111.

There may be a *testatum feri facias* into another county, if the defendant hath not goods enough in the county where the action is laid to satisfy the execution; and the *feri facias* for the ground of the *testatum* may be returned of course by the attorneys, as originals are. 2 *Salk.* 589. If all the money is not levied on a *feri facias*, the writ must be returned before a second execution can be issued, because it is to be grounded on the first writ, by reciting that all the money was not levied. 1 *Salk.* 318.

If an execution is sued on a *feri facias*, and the defendant dies before it is executed, it may be served on the defendant's goods in the hands of his executor or administrator. *Cro. Eliz.* 181. See further, this *Dict.* tit. *Sheriff, Extent, Execution*.

FIFTEENTHS, A tribute or imposition of money, anciently laid generally upon cities, boroughs, &c. through the whole realm; so called, because it amounted to a *fifteenth part* of that which each city or town was valued at, or a *fifteenth* of every man's personal estate according to a reasonable valuation. And every town knew what was a *fifteenth part*, which was always the same; whereas a subsidy raised on every particular man's lands or goods, was adjudged uncertain; and in that regard the *fifteenth* seems to have been a rate formerly laid upon every town; according to the land, or circuit belonging to it. *Camd. Brit.* 171.

There are certain rates mentioned in *Domesday*, for levying this tribute yearly; but since, though the rate be certain, it is not

to be levied but by parliament. See *Cowel*, 1 *Comm.* 309. and this *Dict. tit. Taxes.*

FIGHTING AND QUARRELLING, Is prohibited by statute, in a church or church-yard, &c. on pain of excommunication, and other corporal punishment. Stat. 5 & 6 *Edw. VI. c. 4.* See tit. *Church.*

FIGHTWITE, *Sax.*] A match for fighting, or making a quarrel to the disturbance of the peace.

FIGURES. The stat. 6 *Geo. II. c. 14.* allows the expressing numbers by figures in all writs, &c. pleadings, rules, orders and indictments, &c. in courts of justice, as have been commonly used in the said courts, notwithstanding any thing in the stat. 4 *Geo. II. c. 26.* See tit. *Amendment, Error, Pleading.*

FILACER, FILAZER OR FILIZER, *filizarius*, from Lat. *filum*. Fr. *file, filace*, a thread.] An officer of the court of *common pleas*, so called, as he files those writs whereon he makes out process. There are fourteen of these *filazers* in their several divisions and counties, and they make forth all writs and processes upon original writs, issuing out of chancery, as well real, as personal and mixed, returnable in that court; and in actions merely personal, where the defendants are returned summoned, they make out *pones* or attachments, which being returned and executed, if the defendant appears not, they make forth a *distringas*, and so *ad infinitum*, or until he doth appear; if he be returned *nil*, then process of *capias* infinite, &c. They enter all appearances and special bails, upon any process made by them; and make the first *scire facias* on special bails, writs of *habeas corpus*, *distringas nuper vicecomitem vel ballivum*, and all *supersedeas's* upon special bail: in real actions, writs of view, of grand and *petit cape*, of *withernam*, &c. also writs of *adjournment* of a term, in case of public disturbance, &c.

And until an order of court, 14 *Jac. I.* they entered declarations, imparlances and pleas, and made out writs of execution, and divers other judicial writs, after appearance; but that order limited their proceedings to all matters before appearance, and the *prothonotaries* to all after. The *filazers* of the *common pleas* have been officers of that court before the stat. 10 *Hen. VI. c. 4.* where-in they are mentioned; and in the *king's bench*, of later times, there have been *filazers*, who make out process upon original writs, returnable in that court, on actions in general.

FILE, *filacium*.] A thread, string or wire, upon which writs and other exhibits in courts and offices are fastened or *filed*, for the more safe keeping and ready turning to the same. A *file* is a record of the court; and the *filing* of process of a court, makes it a record of it. 1 *Lill.* 112. An original writ may be *filed* after judgment given in the cause, if sued forth before; declarations, &c. are to be *filed*; and affidavits must be *filed*, some before read in court, and some presently when read in court. *Ibid.* 113. Before *filing* a record removed by *certiorari*, the justices of *B. R.* may refuse to receive it, if it appears to be for delay, &c. and remand it back for the expedition of justice: but if the *certiorari* be once *filed*, the proceedings below cannot be revived. An indictment, &c. cannot be amended after *filed*. See this *Dict. tit. Certiorari, Amendment.*

FIELD ALE OR FILKDALE; A kind of drinking in the *field*,

by bailiffs of hundreds; for which they gathered money of the inhabitants of the hundred to which they belonged: but it has been long since prohibited. *Bracton. 4 Inst. 307.*

FILICETUM, A ferny ground. *Co. Litt. 4.*

FILIOLUS, Is properly a little son; a godson. *Dugd. Warwicksh. 697.*

FILUM AQUÆ, The thread or middle of the stream where a river parts two lordships: *et habeant istas buttas usque ad filum aquæ prædictæ. Mon. Angl. tom. 1. f. 390. File du Mer*, the high tide of the sea. *Rot. Parl. 11 Hen. IV.* It is also the middle of any river or stream which divides counties, townships, parishes, manors, liberties, &c.

FINDERS, Mentioned in several ancient statutes, seem to be the same with those which we now call *searchers*, who are employed for the discovery of goods imported or exported, without paying custom. See tit. *Customs.*

FINE OF LANDS.

THE LAW on this subject, of itself very extensive, is also closely implicated with that of *recoveries*. A definition of both terms is therefore here given, with some idea of the distinct nature of those assurances. See further, this *Dict. tit. Recovery*, for what relates exclusively thereto.

A FINE, *fnis*, or *finalis concordia*, from the words with which it begins; and also from its effect in putting a *final* end to all suits and contentions.] A solemn amicable agreement or composition of a suit, (whether that suit be real or fictitious,) made between the demandant and tenant, with the consent of the judges, and enrolled among the records of the court, where the suit was commenced; by which agreement freehold property may be transferred, settled and limited. See *Cruise on Fines*, 1st edit. 4. 89. 92.

Shepherd says, sometimes it is taken for "a final agreement or conveyance upon record for the settling and securing of lands and tenements;" and so it is designated by some to be, "an acknowledgment, in the king's court, of the land or other things to be his right that doth complain:" and by others, "a covenant made between parties, and recorded by the justices:" and by others, "a friendly, real, and final agreement amongst parties, concerning any land, or rent, or other thing whereof any suit or writ is hanging between them in any court:" and by others more fully "an instrument of record of an agreement concerning lands, tenements or hereditaments, duly made by the king's license, and acknowledged by the parties to the same, upon a writ of covenant, writ of right, or such like, before the justices of the common pleas or others thereunto authorized, and engrossed of record in the same court; to end all controversies thereof, both between themselves which be parties and privies to the same, and all strangers not suing or claiming in due time." *Shep. Touchst. c. 3.* and the authorities there cited.

The most distinguishable properties of a fine are, 1. The extinguishing dormant titles by *barring strangers*; unless they claim within five years. 2. Barring the *issue in tail* immediately. [But not barring the remainders or reversions, which depend on the

estate-tail barred; except where the tenant in tail has the *immediate reversion* in fee in himself. See *Cruise on Fines*, 2d edit. 176. 1 *Show.* 370. 1 *Salk.* 338. 4 *Mod.* 1.] 3. Binding *femes covert*, see *post*, IV. These constitute the peculiar qualities on account of which a fine is most usually, if not always, resorted to, as one of the most valuable of the *common assurances* of the realm: being now in fact a *fictitious proceeding to transfer or secure real property* by a mode more efficacious than ordinary conveyances. 1 *Inst.* 121. a. note 1, 2. for which see, at full length, Mr. *Hargrave's* excellent abridgment of the history of fines and their purposes.

Fines being agreements solemnly made in the king's courts were deemed to be of equal notoriety with judgments in writs of right; and therefore the common law allowed them to have the same quality of barring all who should not claim within a year and a day. See *Plowd.* 357. Hence we may probably date the origin and frequent use of *fines* as feigned proceedings. But this puissance of a fine was taken away by stat. 34 *Edw.* III. c. 16. and this statute continued in force till stat. 1 *Rich.* III. c. 7. and 4 *Hen.* VII. c. 24. which revived the ancient law, though with some change; proclamations being required to make fines more notorious, and the time for claiming being enlarged, from a *year and a day to five years*. See *post*, I. The force of fines on the rights of strangers being thus regulated, it has ever since been a common practice to levy them merely for better guarding a title against claims, which, under the common statutes of limitation, might subsist with a right of *entry* for twenty years; and with a right of *action* for a much longer time. 1 *Inst. ubi supra*, and see *post*.

A *RECOVERY*, in its most extensive sense, is a restitution to a former right by the solemn judgment of a court of justice. In its general acceptation a *common recovery* is a judgment in a fictitious suit, brought against the tenant of the freehold, obtained in consequence of a default made by the person who is last vouched to warranty in such fictitious suit. *Cruise on Recoveries*, 1. 120, 121. 137.

The common recovery that is used for assurance of land is nothing else but *fictio juris*, or a certain form or course set down by law to be observed for the better assuring of lands and tenements to men. And this is somewhat after the example of recovery upon title, which is without consent and contrary to the will of him against whom the same is had; for there is in this a colourable suit, wherein there is a demandant who is called the recoveror, and a tenant who is called the recoveree; and one that is called (or vouched) to warrant upon a supposed warranty, who is called the vouchee. *Shep. Touchst.* c. 3. and the authorities there cited.

Considered as a legal assurance or conveyance, it is a *fiction of law*, adopted for the purpose of destroying that species of perpetuity which was created by the statute *de donis*; (13 *Edw.* I. st. 1. c. 1.) and whereby all tenants in tail are enabled, by pursuing the proper form, to bar their estates-tail. 10 *Rep.* 37. And not only this, but it is also a bar to *ALL remainders and reversions depending* on such estates-tail so barred; and to all *charges and encumbrances*

created by the persons in remainder and reversion. 1 *Repr.* 62. But a common recovery does not bar an executory devise unless the executory devisee comes in as a vouchee. *Fearne*, 306. *Pigot*, 134. *Cro. Jac.* 590. *Palm.* 131. And by stat. 12 *Hen.* VIII. c. 15. no estate held by statute-merchant, staple, or elegit, shall be avoided by means of a feigned recovery. And see also this stat. and stat. of *Gloucester*, 1 *Edw.* I. c. 11. as to termors for years.

DISTINCTIONS. Though a recovery, generally speaking, is a more extensive species of conveyance than a fine; to guard an estate against all claims and encumbrances, yet the operation of each is not seldom necessary in aid of the other. A fine is therefore often levied for the purpose of creating a good tenant to the *precise*, on which the recovery is suffered; and a recovery is frequently suffered in order to operate as a discontinuance of an estate-tail, for the purpose of barring remainders or reversions depending on such estates-tail; and thus a conveyance by *fine* and *recovery*, if *unreversed*, bars all the world.

A fine is technically said to be *levied*—a recovery to be *suffered*. Good writers, however, have but too frequently confounded the terms.

- I. *Generally, of the Nature, several Kinds, and Effect, of a Fine.*
- II. *Of the various sorts of Fines; and how a Fine operates; and of Deeds to lead or declare the uses of a Fine.*
- III. *Of what Things a Fine may be levied.*
- IV. *By whom, and to whom it may be levied, and see post, VI.*
- V. *Before whom, and in what manner it may be levied.*
- VI. *Who may be barred by a Fine, and who not.*
- VII. *How a Fine may be reversed, for Error or Fraud; and of amending Fines.*

I. Under this head it will be necessary to explain, 1. The nature of a fine; 2. Its several kinds; 3. Its force and effect.

1. A fine is sometimes said to be a feoffment of record; *Co. Litt.* 50. though it might with more accuracy be called an acknowledgment of a feoffment on record. By which is to be understood, that it has at least the same force and effect with a feoffment, in the conveying and assuring of lands: though it is one of those methods of transferring estates of freehold by the common law, in which livery of seisin is not necessary to be actually given; the supposition and acknowledgment thereof in a court of record, however fictitious, inducing an equal notoriety. But, more particularly, a fine may be described to be an amicable composition or agreement of a suit, either actual or fictitious, by leave of the king or his justices; whereby the lands in question become, or are acknowledged to be, the right of one of the parties. *Co. Litt.* 120. In its original it was founded on an actual suit, commenced at law for recovery of possession of the land or other hereditaments; and the possession thus gained by such composition 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.

Fines are of equal antiquity with the first rudiments of the law itself; are spoken of by *Glanville*, l. 8. c. 1. and *Bracton*, l. 5. tr. 5.

c. 28. in the reigns of *Henry II.* and *Henry III.* as things then well known and long established: and instances have been produced of them even prior to the *Norman* invasion. *Plowd.* 369. So that the stat. 18 *Edw. I.* called *modus levandi fines*, did not give them original, but only declared and regulated the manner in which they should be levied, and carried on. And that is as follows:

First; the party to whom the land is to be conveyed or assured, commences an action or suit at law against the other, generally an action of covenant, though a fine may also be levied on a writ of *mesne*, of *warrantia charta*, or *de consuetudinibus et servitiis*; (*Finch's L.* 278.) by suing out a writ of *præcipe* called a writ of covenant; the foundation of which is a supposed agreement or covenant, that the one shall convey the lands to the other; on the breach of which agreement the action is brought. On this writ there is due to the king, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for; that is, one-tenth of the annual value. 2 *Inst.* 511. The suit being thus commenced, then follows:

Secondly, the *licentia concordandi*, or *leave to agree* the suit; for, as soon as the action is brought, the defendant, knowing himself to be in the wrong, is supposed to make overtures of peace and accommodation to the plaintiff, who accepting them, but having, upon suing out the writ, given pledges to prosecute his suit, which he endangers if he now deserts it without license, he therefore applies to the court for leave to make the matter up. This leave is readily granted, but for it there is also another fine due to the king by his prerogative, which is an ancient revenue of the crown, and is called the *king's silver*, or sometimes the *post fine*, with respect to the *primer fine* before mentioned. And it is as much as the *primer fine*, and half as much more, or ten shillings for every five marks of land; that is, three-twentieths of the supposed annual value. 5 *Rep.* 39. 2 *Inst.* 511. Stat. 32 *Geo. II. c.* 14.

Thirdly comes the *concord*, or agreement itself, after leave obtained from the court; this is usually an acknowledgment from the deforciant (or those who keep the other out of possession) that the lands in question are the right of the complainant. And from this acknowledgment, or recognition of right, the party levying the fine is called the *cognisor*, and he to whom it is levied the *cognisee*. This acknowledgment must be made either openly in the court of common pleas, or before the lord chief justice of that court, or else before one of the judges of that court, or two or more commissioners in the country, empowered by a special authority called a writ of *dedimus potestatem*; which judges and commissioners are bound by stat. 18 *Edw. I. st.* 4. to take care that the cognisors be of full age, sound memory, and out of prison. If there be any *feme covert* among the cognisors, she is privately examined whether she does it willingly and freely, or by compulsion of her husband.

The concord being the complete fine, it shall be adjudged a fine of that term in which the concord was made, and the writ of covenant returnable. 1 *Salk.* 341. A concord cannot be of any thing but what is contained in the writ of covenant; and the note of the fine remaining with the *chirographer*, it hath been held, *est principale recordum*. 3 *Leon.* 234.

Though one concord will serve for lands that lie in divers coun-

des, yet there must be several writs of covenant. 3 *Inb.* 21. *Dyer*, 227. A concord of a fine may have an exception of part of the things mentioned therein; and if more acres are named than a man hath in the place, or are intended to be passed, no more shall pass by the fine than is agreed upon. 1 *Leon.* 81. 3 *Bulet.* 317, 318.

By these acts all the essential parts of a fine are completed; and if the cognisor dies the next moment after the fine is acknowledged, provided it be subsequent to the day on which the writ is made returnable, still the fine shall be carried on in all its remaining parts. *Comb.* 71. See *post*, VII.

Fourthly comes the *note* of the fine, which is only an abstract of the writ of covenant and the concord; naming the parties, the parcels of land, and the agreement; this must be enrolled of record in the proper office, by direction of stat. 5 *Hen.* IV. c. 14.

The fifth part is the *foot* of the fine, or conclusion of it; which includes the whole matter, reciting the parties, day, year and place, and before whom it was acknowledged or levied. Of this there are indentures made or engrossed at the chirographer's office, and delivered to the cognisor and the cognisee; usually beginning thus, "*Hæc est finalis concordia*;" this is the final agreement;" and then reciting the whole proceeding at length. And thus the fine is completely levied at common law.

By several statutes, still more solemnities are superadded, in order to render the fine more universally public, and less liable to be levied by fraud or covin. And first, by stat. 27 *Edw.* I. c. 1. the note of the fine shall be openly read in the court of common pleas, at two several days in one week, and during such reading all pleas shall cease. By stat. 5 *Hen.* IV. c. 14. 23 *Eliz.* c. 3. all the proceedings on fines, either at the time of acknowledgment, or previous, or subsequent thereto, shall be enrolled of record in the court of common pleas. By stat. 1 *Rich.* III. c. 7. confirmed and enforced, with some alterations, by stat. 4 *Hen.* VII. c. 24. (the latter act superseding the former,) the fine, after engrossment, shall be openly read and proclaimed in court (during which all pleas shall cease) sixteen times, *viz.* four times in the term in which it is made, and four times in each of the three succeeding terms, which is reduced to one in each term by stat. 31 *Eliz.* c. 2. and these proclamations are endorsed on the back of the record. It is also enacted by stat. 23 *Eliz.* c. 3. that the chirographer of fines shall, every term, write out a table of the fines levied in each county in that term, and shall affix them in some open part of the court of common pleas all the next term, and shall also deliver the contents of such table to the sheriff of every county, who shall at the next assises fix the same in some open place in the court, for the more public notoriety of the fine.

2. FINES, thus levied, are of four kinds:

First, what in law French, is called a fine "*sur cognissance de droit, come ceo que il ad de son done*;" or, a fine upon acknowledgment of the right of the cognisee, as that which he hath of the gift of the cognisor. This is the best and surest kind of fine, for thereby the deforciant, in order to keep his covenant with the plaintiff of conveying to him the lands in question, and at the same time to avoid the formality of an actual feoffment and live-

ry, acknowledges in court a former feoffment or gift in possession, to have been made by him to the plaintiff. This fine, therefore, is said to be a feoffment of record; the livery, thus acknowledged in court, being equivalent to an actual livery; so that this assurance is rather a confession of a former conveyance, than a conveyance now originally made; for the deforciant, or cognisor, acknowledges, *cognoscit*, the right to be in the plaintiff, or cognisee, as that which he hath, *de son done*, of the proper gift of himself, the cognisor.

Secondly, a fine "*sur cognisance de droit tantum*," or, upon acknowledgment of the right merely, not with the circumstance of a preceding gift from the cognisor. This is commonly used to pass a *reversionary* interest, which is in the cognisor. For of such reversions there can be no feoffment, or donation with livery supposed; as the possession during the particular estate belongs to a third person. *Moor*, 629. It is worded in this manner, "that the cognisor acknowledges the right to be in the cognisee; and grants for himself and his heirs that the reversion, after the particular estate determines, shall go to the cognisee." *Westm. Symb. p. 2. § 95.*

Thirdly a fine "*sur concessit*," is where the cognisor, in order to make an end of disputes, though he acknowledges no precedent right, yet grants to the cognisee an estate *de novo*, usually for life or years, by way of supposed composition. And this may be done reserving a rent, or the like; for it operates as a new grant. *West. p. 2. § 66.*

Fourthly, a fine "*sur done, grant, et render*," is a double fine, comprehending the fine *sur cognisance de droit come ceo, &c.* and the fine *sur concessit*: and may be used to create particular limitations of estate: and this to persons who are strangers, or not named in the writ of covenant; whereas the fine *sur cognisance de droit come ceo, &c.* conveys nothing but an absolute estate, either of inheritance or at least of freehold. *Salk.* 340. In this last species of fines, the cognisee, after the right is acknowledged to be in him, grants back again or renders to the cognisor, or perhaps to a stranger, some other estate in the premises. But, in general, the first species of fine, *sur cognisance de droit come ceo, &c.* is the most used; as it conveys a clear and absolute freehold, and gives the cognisee a seisin in law, without any actual livery; and is therefore called a fine executed; whereas the others are but executory. See *post*, II.

3. The *force* and *effect* of a fine, principally depend, at this day, on the common law and the two statutes, 4 *Hen.* VII. c. 24. and 32 *Hen.* VIII. c. 36. The ancient common law, with respect to this point, is very forcibly declared by the stat. 18 *Edw.* I. st. 4. in these words, "And the reason why such solemnity is required in passing a fine, is this, because 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 in the world, who are of full age, out of prison, of sound memory, and within the four seas, the day of the fine levied; unless they put in their claim on the foot of the fine within a year and a day." But the doctrine of barring the right by *non-claim*, was abolished for a time by 34 *Edw.*

III. c. 16. which admitted persons to claim, and falsify a fine, at any indefinite distance; *Litt.* § 441. whereby, as Sir *Edward Coke* observes, 2 *Inst.* 581. great contention arose, and few men were sure of their possessions, till the parliament held in 4 *Hen.* VII. reformed that mischief, and excellently moderated between the latitude given by the statute, and the rigour of the common law. For the statute then made, (stat. 4 *Hen.* VII. c. 241.) restored the doctrine of non-claim, but extended the time of claim. So that now, by that statute, the right of all strangers whatsoever is barred, unless they make claim, by way of action or lawful entry, not within one year and a day, as by the common law, but within *five* years after proclamations made: except *feme covert*s, infants, prisoners, persons beyond the seas, and such as are not of whole mind: who have five years allowed to them and their heirs after the death of their husbands, their attaining full age, recovering their liberty, returning into *England*, or being restored to their right mind.

It seems to have been the intention, to have covertly, by this statute, extended fines to have been a bar of estates-tail. But doubts having arisen whether they could, by mere implication, be adjudged a sufficient bar, which they were expressly declared *not* to be by the statute *de donis*; the stat. 32 *Hen.* VIII. c. 36. was thereupon made; which removes all difficulties, by declaring that a fine levied by any person of full age, to whom, or to whose ancestors lands have been entailed, shall be a perpetual bar to them and their heirs claiming by force of such entail: unless the fine be levied by a woman after the death of her husband, of lands which were, by the gift of him, or his ancestors, assigned to her in tail for her jointure; or unless it be of lands entailed by act of parliament or letters patent, and whereof the reversion belongs to the crown. See stat. 11 *Hen.* VII. c. 20.

From this view of the common law, regulated by these statutes, it appears, that a fine is a solemn conveyance on record from the cognisor to the cognisee; and that the persons bound by a fine are *parties*, *privies*, and *strangers*.

The *parties* are either the cognisors, or cognisees; 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, as this is almost the only act that a *feme covert*, or married woman, is permitted by law to do, (and that because she is privately examined as to her voluntary consent, which removes the general suspicion of compulsion by her husband,) it is therefore the usual and almost the only safe method, whereby she can join in the sale, settlement, or encumbrance, of any estate. See *post*, IV.

Though a wife may thus join her husband in either a fine or recovery to convey her own estate and inheritance, or an estate settled upon her by her husband as her jointure, or to convey the husband's estates discharged of dower; (see *Cruise*, *Piggot*;) yet if a jointress after her husband's death levies a fine or suffers a recovery without the consent of the heir, or the next person entitled to an estate of inheritance, the fine or recovery is void, and is also a forfeiture of her estate, by stat. 11 *Hen.* VII. c. 20. See *post*, IV.

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 are the heirs general of the cognisor; the issue in tail since the statute of Hen. VIII. the vendee; the devisee; and all others who must make title by the persons who levied the fine. For the act of the ancestor shall bind the heir, and the act of the principal his substitute, or such as claim under any conveyance made by him subsequent to the fine so levied. 3 *Rep.* 87.

Strangers to a fine are all other persons in the world, except only parties and privies. And these are also bound by a fine, unless within five years after proclamation made, they interpose their claim; provided they are under no legal impediments, and have then a present interest in the estate. Impediments, as hath before been said, are coverture, infancy, imprisonment, insanity, and absence beyond sea; and persons, who are thus incapacitated to prosecute their rights, have five years allowed them to put in their claims after such impediments are removed. Persons also that have not a present, but a future interest only, as in remainder or reversion, have five years allowed them to claim in, from the time that such right accrues. *Co. Litt.* 372. And if within that time they neglect to claim, or (by the stat. 4 *Ann.* c. 16.) if they do not 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. See this *Dict.* tit. *Claim*.

But, in order to make a fine of any avail at all, it is necessary that the parties should have some interest or estate in the lands to be affected by it. Else it were possible that two strangers by a mere confederacy, might defraud 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 *status quo*; whereas if tenant for life levies a fine, it is an absolute forfeiture of his estate to the remainder-man or reversioner, if claimed in proper time. *Co. Litt.* 251. It is not therefore to be supposed that such tenants will frequently run so great a hazard; but if they do, and the claim is not duly made within five years after their respective terms expire, the estate is for ever barred by it. 2 *Lev.* 52. Yet where a stranger, whose presumption cannot thus be punished, officiously interferes in an estate which in no wise belongs to him, his fine is of no effect: and may at any time be set aside (unless by such as are parties or privies thereunto) by pleading that "*partes finis nihil habuerunt.*" *Hob.* 334. And even if a tenant for years, who hath only a chattel interest and no freehold in the land, levies a fine, it operates nothing, but is liable to be defeated by the same plea, 5 *Rep.* 123. *Hard.* 401. See *post*, VII. Wherefore when a lessee for years is disposed to levy a fine, it is usual for him to make a feoffment first, to displace the estate of the reversioner, and create a new freehold by disseisin. *Hardr.* 402. 2 *Lev.* 52. See this *Dict.* tit. *Recovery*.

In order to punish criminally such as thus put the estate of another to the hazard, as far as in them lies, the stat. 21 *Jac.* I. c. 26. makes it felony without benefit of clergy to acknowledge or

procure to be acknowledged, any fine, recovery, judgment, &c. in the name of any person not privy or consenting to the same.

II. FINES are generally divided into those with, and without, proclamations; that with proclamations, is termed a fine according to the statutes 1 *Rich. III. c. 7.* 4 *Hen. VII. c. 24.* And such a fine, every fine that is pleaded is intended [supposed] to be, if it be not shown what fine it is. 3 *Rep. 86.*

If tenant in tail levies a fine, and dies before all the proclamations are made, though the right of the estate-tail descends upon the issue, immediately on the death of the ancestor, yet if proclamations are made afterwards, such right shall be barred by the fine, by the stat. 4 *Hen. VII. c. 24.* 52 *Hen. VIII. c. 36.* 3 *Rep. 84.*

The fine *without proclamations* is called a *fine at the common law*, being levied in such manner as was used before the stat. 4 *Hen. VII. c. 24.* and is still of the like force by the *common law*, to discontinue the estate of the cognisor, if the fine be executed. A fine also *with or without proclamations* is either *executed or executory*: A fine *executed* is such a fine as of its own force gives present possession to the cognisee, without any writ of seisin to enter on the lands, &c. as a fine *sur cognisance de droit come ceo*; and in some respects a fine *sur release, &c.* is said to be *executed*. A fine *executory* doth not execute the possession in the cognisee, without entry or action, but requires a writ of seisin; as the fine *sur cognisance de droit tantum, &c.* unless the party be in possession of the lands; for, if he be in possession at the time of levying the fine, there need not be any such writ, or any execution of the fine; and then the fine will enure by way of extinguishment of right, not altering the estate or possession of the cognisee, however it may better it. *West. § 20.*

Since the statute of uses, 27 *Hen. VIII.* writs of possession are never sued out where fines are levied to uses; for the statute executing the possession to the use, the cognisee is immediately in possession without attornment; and by stat. 4 & 5 *Ann. c. 16.* attornment after a fine is become unnecessary. *Booth, 250. Pig. 49. Cruise, 59.*

Fines are likewise *single or double*; *single*, where an estate is granted by the cognisor to the cognisee, and nothing is thereby rendered back again from the cognisee to the cognisor. The *double* fine is that which doth contain a grant or render back again from the cognisee, of the land itself; or of some rent, common, or other thing out of it, and by which remainders are limited, &c. *West. §§ 21. 30.* A fine is also sometimes called a *double* fine, when the lands lie in several counties.

Lands that are bought of divers persons may pass by one fine, and then the writ of covenant must be brought by all the vendees against all the vendors, and they must every one of them warrant for himself and his heirs; and such a fine is good. *Shep. Touchst. c. 2. ft. 19.* And such *joint fines* seem reasonable, when the several purchases are of small value, though they are *ex gratia*. See *Wils. on Fines, 47.* where an order of the chancellor is inserted, authorizing the cursitor to stay the writ when there is more than one demandant and one deforciant, except coparceners, joint-tenants

and tenants in common. It is now the practice to permit two separate purchases to be comprised in one fine, on an affidavit that the value of them together does not exceed 200*l*.

The first kind of fine *sur consuance de droit come ceo, &c.* is a single fine levied with proclamations, according to the stat. 4 Hen. VII. c. 24. It is, as has been already said, the principal and surest kind of fine: and this because it is said to be executed, as it gives present possession (at least in law) to the cognisee, so that he needs no writ of *hab. fac. seisinam*, or other means for execution thereof; for it admits the possession of the lands, of which the fine is levied, to pass by the fine, so that the cognisee may enter and the estate is thereby in him, to such uses as are declared in the deed to lead the uses thereof; but if it be not declared by deed to what use the fine was levied, such fine shall be to the use of the cognisor that levied the same. 2 Inst. 513.

A fine *sur consuance de droit come ceo, &c.* may not be levied to any person but one that is party to the writ of covenant; though a vouchee, after he hath entered into the warranty to the demandant, it is said, may confess the action, or levy a fine to the demandant, for he is then supposed to be tenant of the land, though he is not a party to the writ; and yet a fine levied by the vouchee to a stranger is void. No single fine can be with the remainder over to another person not contained in it: but if *A.* levy a fine to *B.* *sur consuance de droit come ceo*, and *B.* by the same concord grants back the land again to *A.* for life, remainder to *E.* the wife of *A.* for her life, remainder to *A.* and his heirs; this will be a good fine. Plowd. 248, 249.

The second sort of fine *sur consuance de droit tantum*, is said to be a fine *executory*, and much of the nature of a fine *sur concessit*: though it is most commonly made use of to pass a reversion, it is also sometimes used by tenant for life, to make a release (in nature of a surrender) to him in reversion, but not by the word *surrender*; for it is said a particular tenant, as for life, &c. cannot surrender his term to him in reversion by fine; but he may grant and release to him by fine. Plowd. 268. Dyer, 216. A fine upon a release, &c. shall not be intended to be to any other use, but to him to whom it is levied. 3 Leon. 61.

The fine *sur concessit*, used to grant away estates for life or years, is also *executory*, so that the cognisees must enter, or have a writ of *hab. fac. seisinam* to obtain possession; if the parties to whom the estate is limited, at the time of levying such fine, be not in possession of the thing granted.

The fine *sur done, grant et render*, is partly *executed* and partly *executory*; and as to the first part of it, is altogether of the same nature with a fine *sur consuance de droit come ceo*; but as to the second part containing a grant and render back, it is taken in law to be rather a private conveyance or charter between party and party, and not as a writ of judgment upon record: and this render is sometimes of the whole estate, and sometimes of a particular estate, with remainder or remainders over; or of the reversion; and sometimes with reservations of rent and clause of distress, and grant thereof over by the same fine. 5 Rep. 38.

A. B. and *C. D.* levied a fine of lands, and the cognisee by the same fine rendered back the land to *A. B.* in tail, reserving a rent

to himself, &c. the rent and reversion shall pass, though in one fine, and it shall enure as several fines. *Cro. Eliz.* 727.

It is said, a *grant* and *render* of land cannot be immediately *in primo gradu* to a person who is no party to the writ; but mediately, or *in secundo gradu*, it may. 3 *Rep.* 514. *Bro.* 108. The fine with *grant* and *render*, differs from the fine *sur consauance de droit come ceo*, &c. as that must be levied of the land in the original; but the *grant* and *render* may be of another thing than is expressed in the original; though to make a good *grant* and *render*, the land rendered must pass to the *cognisee* by the fine; for he cannot render what he hath not. 3 *Rep.* 98. 510.

A man may not by this fine reserve to himself a less estate by way of remainder than the fee; and the render of a rent (if any be) must be to one of the parties to the fine, and not to a stranger. *Dyer*, 33. 69. 2 *Rep.* 39. To make a lease for years, &c. by fine with a render, the lessee must acknowledge the land to be the right of the lessor that is seised thereof; and then such lessor grants and renders the same back again to the lessee, for a certain number of years, reserving rent, &c. and this is a good fine: but if the lessor be tenant in tail, then to bind him, he and the lessee are to acknowledge the tenements the right of *A. B.* who is to render the same fine to lessee for years; the remainder to the lessor and his heirs, &c. 44 *Edw. III.* c. 45. 2 *Leon.* 206.

A fine and render is a conveyance at common law, and makes the *cognisor*, on the render back, a new purchaser; by which, lands arising on the part of the mother, may go to the heirs on the part of the father, &c. 1 *Salk.* 337.

All sorts of fines in general may enure as a confirmation of a former estate, which was defeasible before. 1 *Sand.* 261. So a fine may enure by way of extinguishment; therefore, if tenant in tail makes a lease, or other estate to *A.* and afterwards levies a fine to *B.* the lease, or other estate, shall be indefeasible; for his right during such former estate was extinct by the fine. *R. Jones*, 60. *Cra. Jac.* 689. See this *Dict.* tit. *Estates*.

Where a fine and recovery is of so many acres in *S.*, the party interested shall have his election where and in what parts of the estate the fine and recovery should operate. *Blany (Ld.) v. Mahon*, *Bro. P. C.*

A fine does not ascertain, but only comprises the lands whereof it is levied; so that it is in all cases extremely proper to have a declaration of uses; that the very lands comprehended in the fine, and intended to pass by it, may be precisely ascertained. 1 *Cruise*, cap. 7.

Fine by *E.* to the use of himself for life, remainder to his wife that should be at the time of his death, for life; remainder to the son of *E.* in tail. *E.* took to wife *A.* A fine levied by *E.* and *A.* his wife, who afterwards survived him, and other uses declared, is no bar to her, because it was uncertain who would be the person; but had the person been certain, there, perhaps, notwithstanding it was but a possibility, it might have been a bar; per *Walmsley, J. Cro. Eliz.* 826. pl. 31.

Of deeds to lead or declare the uses of fines (and recoveries.) If a fine or recovery be levied or suffered without any good consideration, and without any uses declared, they, like other convey-

ances, enure only to the use of him who levies or suffers them. And if a consideration appears, yet as the most usual fine *sur cognissance de droit come ceo, &c.* conveys an absolute estate without any limitations to the cognisee, and as common recoveries do the same to the recoveror, these assurances could not be made to answer the purpose of family settlements, unless their force and effect were subjected to the direction of other more complicated deeds, wherein particular uses can be more particularly expressed. If the deeds are made previous to the fine or recovery, they are called deeds to *lead* the uses; if subsequent, deeds to *declare* them; and the fine or recovery shall enure to the uses specified in such deeds, and to no other. *Doug. 45. 2 Wils. 220.* If a fine or recovery be had without any previous settlement, and a deed be afterwards made between the parties declaring the uses to which the same shall be applied, this will be equally good as if it had been expressly levied or recovered in consequence of a deed directing its operation to these particular uses; for by stat. 4 & 5 *Ann. c. 16.* indentures to declare the uses of fines and recoveries had and suffered, shall be good and effectual in law, and the fine and recovery shall enure to such uses, and be esteemed to be only in trust, notwithstanding any doubts that had arisen on the statute of frauds, 29 *Car. II. c. 3.* to the contrary.

If a *feme covert* alone declares the uses of a fine, intended to be levied by husband and wife of her land, and the husband alone declares other uses; it hath been held that both declarations of uses are void, and the use shall follow the ownership of the lands: but in another case it was determined that the uses declared by the wife were void, and the uses declared by the husband, good only against himself, during the coverture. If husband and wife levy a fine of the lands of the wife, and he alone declares the uses, this shall bind the wife, if her dissent doth not appear; because otherwise it shall be intended that she did consent. 2 *Rep. 56. 59.* Though there be a variance between a deed declaring uses, and the fine levied; yet, if nothing appears to the contrary, such fine by construction of law shall be to the uses declared in the deed, and which is evidence thereof: and where a fine varies from a former description, it has been held that a new deed made after, will declare the use of the fine. It is not absolutely necessary to insert the word *use*, in the declaration of uses of fines; for any words which show the intent of the parties will be sufficient. 1 *Lord Raym. 289, 290.*

III. A FINE may be levied of every species of real property, as of a *house, or messuage, manor, castle, office, rent, &c.* and in general it may be laid down as a certain rule, that a fine may be levied of every thing, whereof a *præcipe quod reddat* lies, &c. or of any thing, whereof a *præcipe quod faciat* lies; as customs, services, &c. or whereof a *præcipe quod permittat*, or *præcipe quod teneat* may be brought. 2 *Inst. 513.*

As fines may be levied of things in possession, so they may be levied of a remainder or reversion, or of a right *in futuro*. 3 *Rep. 90.*

So now, since the stat. 32 *Hen. VIII. c. 7.* (see tit. *Tithes*.) it may be levied of rectories, vicarages, tithes, pensions, oblations,

and all ecclesiastical inheritances made temporal. Of a chantry. So it may be of a seigniory. Of all services; as a homage, fealty, &c. *West.* Of common of pasture. Of a corody. Of an office; as of the custody of a forest. Of a boilary. Of two pools and a fishery in the water of *D.* Of an annuity. See *West. Symb.* 6, 7. *Shep. Touchst.* c. 2.

A fine may be, and usually is, levied of a share in the *New River water*, by the description of so much land covered by water; and when a fine and recovery of such share is necessary, in regard the *New River* runs through the several counties of *Hertford*, *Middlesex* and *London*, there must be three several fines and recoveries. 2 *P. Wms.* 128.

Where money is agreed to be laid out in lands to be settled in tail, a fine cannot be levied of the money, but a decree of a court of equity can bind it, as much as a fine alone could have bound the land, if it had been bought and settled. 1 *P. Wms.* 130. 2 *Atk.* 453. 3 *Atk.* 447. 1 *Vez.* 146. and see 1 *P. Wms.* 471. 485. 1 *Bro. C. R.* 223.

Fines may be levied of all things *in esse, tempore finis*, which are inheritable, but not of things uncertain, or of lands held in tail by the king's letters patent; of land restrained from sale by act of parliament, or of lands in right of a man's wife, without the wife, &c. 5 *Rep.* 225. *Westm.* § 25. Nor of common without number. *Cruise*, 121.

A fine may be levied of a rent-charge, or of a chief rent; and if a person who has a rent-charge levies a fine of the land, out of which the rent-charge issues, it will bar the rent-charge, though the fine be levied of the land, and not of the rent-charge. *Cruise*, c. 7. and the authorities there cited.

A fine may be levied of an undivided moiety, or fourth part of a manor, as well as of the whole. 3 *Rep.* 88. But where a fine is levied of a manor, nothing but a real manor will pass, and not a manor by reputation only. *Cruise*, c. 7.

The word *tenement* is not a sufficient description of any thing whereof a fine is to be levied; for a tenement may consist of an advowson, a house or land of any kind; and therefore a fine levied of a tenement is void, or at least voidable by writ of error; but a fine of a *messuage* or *tenement* would probably be now held good. *Cruise*, c. 7. See tit. *Ejectment*.

And almost any kind of contract may be made and expressed by a fine, as by a deed; and therefore it may be so made that one of the parties shall have the land, and the other a rent out of it; and that one shall have it for a time, and another for another time; also a lease for years, or a jointure for a wife, may be made; and a gift in tail, and a remainder over, may be limited and created thereby. 1 *Rep.* 76.

IV. THE KING, and all persons who may lawfully grant by deed, may levy a fine, but not infants, idiots, lunatics, &c. 7 *Rep.* 32. A corporation-sole may levy a fine of land which he has in his corporate capacity; but bishops, deans, and chapters, parsons, &c. are restrained from levying of fines to bind their successors. But a fine cannot be levied by a corporation aggregate; for it cannot act but by attorney, and it cannot make consuance by attorney. All

persons that may be grantees, or that may take by contract, may take by fine; though in cases of infants, *feme covert*s, persons attainted, aliens, &c. who, it is said, may take by fine, before the engrossing of the fine, there goes a writ to the justices of *C. B. quod permittant finem levari*. *Litt.* 669. Tenant in fee-simple, fee-tail general, or special, tenant in remainder or reversion, may levy a fine of their estates; so may tenant for life, to hold to the cognisee for life of tenant for life; but a person who is tenant, or hath an interest only for years, cannot levy a fine of his term to another. *3 Rep.* 77. *5 Rep.* 124.

It is not necessary to be in possession of the freehold, in order to levy a fine; but if any one entitled to the inheritance, or to a remainder in tail, levies a fine, it will bar his issue, and all heirs who derive their title through him. *Hob.* 333.

A fine by a man *non compos*, though it ought not to be levied, binds for ever when it is levied. So a fine by a man attainted for treason, or felony, binds all but the king, or the lord of the fee. *West. Symb.* 3. a. See *2 Wils.* 220. So a fine by an infant or *feme covert* without her husband, binds till it be avoided. *Vide Com. Dig.* tit. *Baron and Feme*, (P. 1.) *Enfant*, (B. 2.) See *2 Black. Rep.* 1205. a fine acknowledged *de bene esse* by a *feme covert*, whose husband was abroad, before the lord chief justice then in court.

If commissioners take a fine of an infant, &c. the court will grant an attachment against them; and upon examination and inspection, the fine shall be vacated. *R. Skin.* 24.

Lands assured for dower, or term of life, or in tail, to any woman by means of her husband, or his ancestors, cannot be conveyed away from her by fine, &c. without her act; but if a woman and her husband levy a fine of her jointure, she is barred of the same; though if the jointure be made after coverture, when the wife hath an election to have her jointure, or dower on the husband's death, it is said this will be no bar of her dower in the residue of the land of the husband. *Dyer*, 358. *Leon.* 185. See tit. *Dower, Jointure*.

No fine of the husband alone, of the lands of the wife, shall hurt her, but that she or her heirs, or such as have right, may avoid it; but if she joins with him, it shall bind her and her heirs. Women covert ought to be cautious in levying fines with their husbands of their own lands; and if a married woman under age levies a fine of her lands, she cannot reverse it during her husband's life, nor after his death, if she be of full age when he dies; but if the husband dies during her minority, she may. *Dyer*, 359. *Wood's Inst.* 243. A married woman ought not to be admitted alone without her husband to levy a fine; and if she be received, the husband may avoid the fine by entry; but if he do not, it is good to bar her and her heirs, except she be an infant at the time of the fine levied; the husband and wife together may dispose of her land, &c. *12 Rep.* 122. If *baron* and *feme* levy a fine, the *feme* within age, she may be brought into court by *habeas corpus*, and if it be found by inspection that she is under age, it hath been adjudged, where the *baron* and *feme* brought a writ of error, that as to both, *quod finis revocetur*. *1 Leon.* 116, 117. *3 Salk.* 168.

Husband and wife, tenants in special tail, the husband only le-

vies a fine, this bars the issue in tail; but it remains in right to the wife as to herself, and to all the estates and remainders depending upon it, and all the consequences of benefit to herself and others, so long as she lives, as if the fine had not been levied. *Hob.* 257. 259. If a husband make a feoffment of the wife's lands, upon condition, which is broken, and the feoffee levies a fine, and the husband and wife die having issue, and five years pass; the heir is barred to enter as heir to the father upon the condition, but he shall have five years after the death of his father, as heir to his mother. *Plowd.* 367. When the husband and wife join in a fine of the wife's lands, all the estate passeth from her, and he is joined only for conformity; so that if the fine levied by husband and wife in such a case be reversed, she shall have restitution. 2 *Rep.* 57. 77. A husband and his wife covenanted to levy a fine of the lands of the wife, to the use of the heirs of the body of the husband on the wife, remainder to the husband in fee; both dying without issue, it was held that the heir of the wife had the title, because the limitation to the heirs of the body of the husband was merely void, there being no precedent estate of freehold for life, &c. to support it as a remainder. 2 *Salk.* 675. 4 *Mod.* 253.

As to *femes covert*, the books which say, that a fine shall not bind a woman under coverture unless she be examined, must not be understood as if it were in her power to reverse the fine for want of her examination, but they are to be understood in this sense, that the judge ought not to receive a fine from a *feme covert* without examining her, lest it should not proceed from her own freedom and choice; but if such a fine be once admitted, and recorded without any examination, though the judge has omitted a very necessary part of his duty, yet the fine shall stand, and neither the *feme* nor her heirs shall be admitted to aver that she was not examined; for that were to lessen the credit of the judgment of the courts of justice, which is the highest evidence of the law. 2 *New Abr.* 527. See 1 *Inst.* 121. a. in the note already referred to; in which arguments are brought to prove (apparently with great force and justice) that the common notion, of a fine binding *femes covert* merely by reason of the secret examination of the wife by the judges, is incorrect. If the secret examination by itself was so operative, the law would provide the means of effectually adding that form to ordinary conveyances, and so make them conclusive to *femes covert* equally with a fine. But it is clearly otherwise; and, except in the case of conveyances by custom, there must be a *suit depending* for the freehold and inheritance, or the examination, being extrajudicial, is ineffectual. This mode of binding *femes covert* by the judgment of the court in a real action, appears to have arisen from admitting them and their husbands jointly to defend actions brought against the *feme* for her estate, the adverse judgment on which was final against the *feme*. When the transition was made to the case of friendly suits, the form of secret examination was introduced to avoid any undue influence of the husband. That the examination of a *feme* in other cases does not bind her to the alienation of her property. See 2 *Inst.* 673. *Keilw.* 4—20. The just explanation therefore of the subject seems to be, that the pendency of a real action for the freehold of the land, in consequence of previously taking out an original writ, (without which preliminary even at this day a fine is a

nullity,) should be deemed the *primary* cause of a fine's binding a *feme covert*; and that her secret examination on taking the acknowledgment of the fine, is only a secondary cause of this operation of fines; see this *Dict. tit. Baron and Feme VIII.*

Where the estate of a married woman had been regularly sold, with the consent of her husband, the conveyance executed by him, and the purchase-money paid, the court of C. P. allowed the wife to levy a fine, although her husband had in the interim become *non compos*. *New Rep. C. P. 312.*

If a widow having an estate in dower accept of a fine, and by the same fine render back the land for 100 years, &c. *this is a forfeiture of her estate* within the stat. 11 *Hen. VII. c. 20.* See *ante*, I. 3.

A. seized in fee levied a fine to himself for life, remainder to his wife in tail male for her jointure; had issue male; husband and wife levied a fine and suffered a recovery. After the death of the husband and wife issue male entered by force of the stat. 11 *Hen. VII.* and held lawful. This case is out of the letter, though within the remedy of the statute, for she neither levied the fine, &c. being sole, or with any aftertaken husband, but by herself with the husband who made the jointure. *Co. Litt. 365. b.* See further, *Vin. Abr. Jointress, (I. K.) Bac. Abr. Discontinuance, (D)*; as to what shall be deemed a forfeiture within the stat. 11 *Hen. VII. c. 20.* and who shall take advantage of it.

If tenant for life grants a greater estate by fine than for his own life, it is a forfeiture: and if there be *tenant for life*, and *remainder for life*, and the tenant for life levy a fine to him in remainder and his heirs, both their estates are forfeited; the tenant for life by levying the fine, and the remainder-man for life by accepting it. 2 *Lev. 209.* Where a fine is levied by tenant for life, for a greater estate, the fine may be good; but it is a forfeiture of the estate of tenant for life, whereof he in remainder, &c. may take present advantage and enter; and when a person enters for a forfeiture, all estates are avoided. *Dyer, 111.* Though if such a tenant for life levy a fine *sur grant et release* to the cognisee for the life of tenant for life; or by a fine grant a rent out of the land for a longer time, the fine is good, and there will be no forfeiture of the estate of tenant for life: so likewise if a fine be levied of lands by tenant for life, to a stranger, who thereby acknowledges all his right to be in the tenant for life, and releases to him and his heirs. 27 *Edw. I. 1. 44 Edw. III. 36.*

If there be tenant in tail upon condition not to alien, or discontinue the lands, &c. if he doth, the donor to re-enter; and his issue levy a fine of the land, this is a forfeiture of the estate. 1 *Leon. 292.* An estate being settled on husband and wife for life, remainder to first and other sons in tail, with remainders over; after the birth of their eldest son, they by release and fine, mortgaged the lands: on a bill exhibited against the son to redeem, &c. he pleaded the marriage settlement of his father and mother, whereby they were but tenants for life, and that his fine was a forfeiture of their estate; and so it was adjudged. *Preced. Canc. 591.* But it is said where a wife by settlement has only a trust for life, if she joins with her husband in a mortgage in fee and fine of the lands; this trust is not forfeited, as it would be in case of a legal estate. 1 *P. Wms. 147.*

As to fines levied by an *infant*, though strictly speaking all con-

tracts made by infants are in their own nature void, *because a contract is an act of the understanding, which during their infancy, they are presumed to want*; yet civil societies have so far supplied that defect, and taken care of them, as to allow them to contract for their benefit and advantage, with power to recede from and vacate it when it may prove prejudicial to them; now the method to set aside such a contract must be by matter of equal notoriety with the manner in which it was made; and therefore if an infant levies a fine, which is no more than his own agreement recorded as the judgment of the court, he must reverse it by writ of error, and this must be brought during his minority, that the court of *B. R.* by inspection may determine the age of the infant; but the judges may in such cases inform themselves by witnesses, church-books, &c. *2 New Abr.* 526. *Co. Litt.* 380. b. *Moor*, 76. *2 Roll. Abr.* 15. *Bro. tit. Error.* *Bro. tit. Fines*, 74, 79. *2 Inst.* 482. *2 Bulst.* 320. *12 Co.* 122. See this *Dict.* tit. *Infant*, and the stat. 7 *Ann. c.* 19. there cited.

With regard to *idiots* and *lunatics*, it is necessary to distinguish between their acts done *in pais*, and those solemnly acknowledged on record; though the law is clear, that in neither case are they admitted to disable themselves, for the insecurity that may arise in contracts from counterfeit madness and folly, 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 nobody can be thought to counterfeit it, when he can expect no benefit from it himself. *4 Co.* 124. *12 Co.* 124. *Co. Litt.* 247. *Bro. tit. Fait*, 62. *Cro. Eliz.* 398. 622. *Fitz. N. B.* 202.

But neither the lunatic himself, nor his heir, can vacate any act of his done in a *court of record*; and therefore if a person *non compos* acknowledges a fine, it shall stand against him and his heirs; for though the judge ought not to admit of a fine from a man 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 in 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. *4 Co.* 124. *12 Co.* 124. *2 Inst.* 483. *Bro. tit. Fines*, 75. *Co. Litt.* 247. See this *Dict.* tit. *Idiots and Lunatics*.

By the common law if an infant or idiot has by any neglect or contrivance been permitted to levy a fine, his declaration of the uses thereof will be good, so long as the fine remains in force; and if the fine is never reversed, his declaration of the uses will be binding and conclusive on him and his heirs for ever: because the law will not presume that a fine, which is a solemn actⁿ on record, has been levied by a person labouring under such disabilities; and therefore until the fine which is the principal is annulled, the declaration of the uses thereof will remain good. Thus stands the common law on this point; but as the court of chancery has, in many instances, compelled persons who had obtained estates under a fine in a fraudulent manner to reconvey them to those who were really entitled thereto: so that court will interpose its authority in cases of this kind, and not suffer the declaration of uses of a fine levied by an idiot to bar his heirs; as no species of fraud can be more evident, than that of obtaining a conveyance from a person of this description. *Cruise*, c. 15. and see *post*, VII. and tit. *Recovery*.

V. FINES are now levied in the court of *common pleas* at *Westminster*, on account of the solemnity thereof, ordained by the stat. 18 *Edw. I. st. 4.* and 27 *Edw. I. st. 1. c. 1.* before which time they were sometimes levied in the *exchequer*, in the *county courts*, *courts baron*, &c. They may be acknowledged before the lord chief justice of the *common pleas*, as well in, as out of court; and two of the justices of the same court have power to take them in open court; also justices of assise may do it by the general words of their patent or commission; but they do not usually certify them without a special writ of *dedimus potestatem*. 2 *Inst.* 512. *Dyer*, 224. The chief justice of C. P. may, by the prerogative of his place, take cognisance of fines in any place out of the court; and certify the same without any writ of *dedimus potestatem*. But the chief justice of *England* cannot, nor any other of the justices, except the chief justice of C. P. who hath this special authority by custom and not by any statute. 9 *Co. Read.*

The king by patent or commission, with a *non obstante*, may give power to *A.* and *B.* justices of assise in a circuit, when *A.* is not a judge of either of the benches, only a serjeant at law, &c. to take the cognisance of all fines jointly and severally; and upon such a commission the cognisance of a fine taken by *A.* will be good, without any *dedimus potestatem* sued out before, or after it. *Jenk. Cent.* 277.

Fines may be, and are levied in the *city of Chester*, by stat. 43 *Eliz. c. 15.*

In the county palatine of *Chester*, by stat. 2 & 3 *Edw. VI. c. 28.*

In the county palatine of *Lancaster*, stat. 37 *Hen. VIII. c. 19.*

In that of *Durham*, by stat. 5 *Eliz. c. 27.* And in the courts of great sessions in *Wales*, by stat. 34 & 35 *Hen. VIII. c. 26. § 40.*

The tenure of *ancient demesne* being a species of privileged villenage, the tenants thereof could not sue or be sued for their lands in the king's courts of common law, but had the privilege of having justice administered to them in the court of the manor by *petit writ of droit close* directed to the bailiffs of the king's manors or to the lord of the manor whereof the lands were held. In consequence of this principle no fine could be levied by a tenant in ancient demesne in the court of common pleas; but as such tenants were allowed to commence actions in the court of the manor, they were also permitted to compound their suits; by which means fines have at all times been levied of lands held in ancient demesne upon little writs of right close in the court of the manor. These fines work a discontinuance; and the reason is because the freehold is recovered in the action; every recoverer being supposed to recover a fee-simple; and the recovery of the fee-simple must work a discontinuance. 1 *Cruise*, 93. b. edition, 1786.

Fines are also taken by commissioners in the country, empowered by *dedimus potestatem*; the writ of *dedimus* doth surmise, that the parties who are to acknowledge the fine are not able to travel to *Westminster* for the doing thereof: these commissions, general and special, issue out of the chancery. By the *common law* all fines were levied in court; but the stat. of *Carlisle*, 15 *Edw. II.* allows the *dedimus potestatem* to commissioners, who may be punished for abuses, and the fines taken before them set aside: and it is said an information may be brought by him in reversion against

commissioners, who take the caption of a fine, where a married woman, &c. is an infant. 3 *Lev.* 36.

In the levying of fines in court, a pleader shall say, *Sir justice congé d'accorder*, &c. i. e. he desires leave to accord or agree: and when the sum for the king's fine is agreed, after proclamation and crying the peace, the pleader shall repeat the substance of the fine, &c. See stat. *De Finibus*, 18 *Edw.* I. st. 4.

Touching the form of fines, it is to be considered upon what writ or action the concord is to be made: and there must first pass a pair of indentures between the cognisor and cognisee, whereby the cognisor covenants to pass a fine to the cognisee of such things, by a time limited; and these indentures preceding the fine, are said to lead the uses of the fine. But by the stat. 4 *Ann.* c. 16. the uses of a fine, &c. may be declared after the fine levied, and be good in law. Upon this the writ of covenant is brought by the cognisee against the cognisor, who then yields to pass the fine before the judge; and so the acknowledgment being recorded, the cognisor and his heirs are presently concluded, and all persons (strangers not excepted) after five years past; and if the writ whereon the fine is grounded, be not a writ of covenant, which is usual, but of *warrantia chartæ*, or a writ of right, or of customs and services, &c. then the writ is to be served upon the party that is to acknowledge the fine; and he appearing doth it accordingly. *West.* § 23. *Dyer*, 179.

It is the statute *de finibus*, 18 *Edw.* I. st. 4. which directs that a final concord cannot be levied in the king's court, without original writ. And when a fine is passed, it is to be in the presence of the parties, who are to be of full age, and good memory; and if a *feme covert* be one, she is to be privately examined if she consent freely; for if she doth not, the fine cannot be levied. By stat. 1 *Rich.* III. c. 7. when a fine is engrossed and read and proclaimed in the court of *C. B.* a transcript is to be sent to the justices of assise, and another to the justices of the peace of the county where the land lieth, to be openly proclaimed at their several sessions, which being certified, concludes all persons; but *quære* whether this is not superseded by the stat. 4 *Hen.* VII. c. 24. which declares that the proclamations in court being made, the fine shall be final? See *ante*, I.

The day and year of acknowledging a fine, and warrant of attorney for the suffering a recovery, are to be certified with the concord: and an office is erected for the enrolment of writs for fines, &c. the fees whereof are limited and appointed by stat. 23 *Eliz.* c. 3.

Every fine at the time of signing the judge's *allocatur* thereon, shall have the writ of covenant made out and annexed thereto. *Reg. Gen. C. P. Trin.* 30 *Geo.* III.

No fine which appears to have been acknowledged more than twelve months, can pass the king's silver office, without a rule of court or judge's order. In such case, if the conusor be living, an affidavit must be made thereof; if dead, the affidavit cannot state the time of his death; and the application for a rule or order, that the fine may pass the king's silver office, shall be made on motion to the court if in term time; if in vacation to a judge at chambers: and the rule or order must be filed with the *precipe* and concord at the king's silver office. *Reg. Gen. C. P. Pasch.* 36 *Geo.* III.

If under a *dedimus patetatem*, to take the acknowledgment of nine persons to a fine, the commissioners take the acknowledgment of six on one piece of parchment, and of three on another, the court will not allow the fine to pass. *Bos. & Pull.* 366.

VI. See GENERALLY as to the effect of a fine, *ante*, I. 3.—More particularly,

Interests in estates which may be barred by fine, are either *interests* by common law, or by custom; as copyholds, &c. And if I have a fee-simple, and am disseised, and the disseisor levies a fine with proclamations, and I do not claim within five years after, I and my heirs (allowance being made for impediments) are barred for ever. *Plowd.* 353. 3 *Rep.* 79. If a man purchase lands of another in fee, and after, finding his title to be bad, and that a stranger hath right to the land, levies a fine thereof with intent to bar him; and he suffers five years to pass without claim, &c. he is barred of his right for ever: and in these cases none shall be relieved in equity. 3 *Rep. Doct. & Stud.* 83. 155.

Femes covert have five years after the death of their husbands, to avoid the fine of the husband of the wife's lands; and also to claim their dower; and if they do not make their claim in that time by action or entry, they are barred by statute. *Dyer*, 72. 2 *Rep.* 93.

An *infant* shall have five years after he comes of age, although he was in his mother's womb at the time of the fine levied. *Plowd.* 359. And an infant is allowed time during his minority, to reverse his own fine and prevent the bar; and if not reversed during that time, their fines will be good. *Ass. pl.* 53.

Strangers out of the realm at the time of the fine levied, shall have five years after their return to prevent the bar; and so if they were in *England* when the fine was levied, and within five years are sent in the king's service by his commandant. *Plowd.* 366.

A person in *Scotland* or *Ireland* shall be said to be out of the realm. 4 *Hen.* VII. c. 24.

Lunatics, &c. shall have five years after the cure of their maladies, though the infirmity happen after the fine levied, if before the last proclamation. *Plowd.* 367. *Dyer*, 3.

And they who have *divers defects* have five years after the last infirmity removed; but if the party dies, his heir shall not have a new five years. *Plowd.* 375. *Dyer*, 233.

If a *feme covert* dies during the coverture, being no party to the fine, &c. or if an *infant* being party to the fine, and having present right, dies in his infancy: if a *person beyond sea* when the fine was levied, never return, &c. a *person in prison* dies whilst therein: or if one *non compos*, &c. dies such; in all these cases, their heirs are not limited to any time. 2 *Inst.* 519, 520. Five years are given after a *remainder* falls; and five years after the *forfeiture* of tenant for life. *Plowd.* 374.

When once the five years, allowed to an infant to make an entry for the purpose of avoiding a fine, begin, the time continues to run, notwithstanding any subsequent disability: neither will subsequent insanity stop the running of a fine once commenced. 4 *Term Rep.* K. B. 300. 306. n.

A *future interest* of another person, cannot be barred by fine and non-claim, until five years after it happens; as in case of a *remainder* or *reversion*. 2 *Rep.* 93. *Raym.* 151. And where there is

no present nor future right in land, &c. only a *possibility* at the time of levying the fine, a person may enter and claim when he pleases. 10 *Rep.* 49. Also when there is only *right* to a rent, &c. issuing out of lands, and not the land in the fine, the persons that have it are not barred at all. 5 *Rep.* 124.

No fine bars any estate in *possession* or *reversion* which is not *divested*, or *put to a right*. 9 *Rep.* 106. He that at the time of a fine levied had not any *title* to enter shall not be immediately barred by the fine: but this is in case of an *interest* not turned to a *right*, where a man is not bound to claim; and not in the case of tenant in tail, barring his issue. See stat. 32 *Hen. VIII.* c. 36.

When an estate is *put to right*, and there comes a fine and non-claim, it is a perpetual bar. *Carter*, 82. 162. A fine *sur grant et render* was levied, and a *scire facias* brought and judgment given, and also writ of seisin awarded, but not executed: and afterwards a second fine was levied and executed, and five years passed, it was the opinion of the court that the second fine barred the first. *March's Rep.* 194. 2 *Nels. Abr.* 864.

If a man *attainted of treason or felony*, levy a fine of his land, this, as to the king, and lord of whom the land is held, is *void*, and no bar to their *title of forfeiture*: but as to all others it is a good bar. 2 *Shep. Abr.* 241. One levied a fine, and then was *outlawed for treason* and died; the heir reversed the outlawry, and it was held the wife should have her dower, if she bring her action within five years. *Moor*, c. 876. A fine is levied by lessee for life, &c. who continues the possession, and pays the rent; it shall not bind the lessor, who shall have five years' claim after the determination of the lessee's estate, &c. 3 *Rep.* 77, 78. If one doth levy a fine of my land, while I am in possession, this will not hurt me; nor where a stranger levies a fine of my lands let to a tenant, if the tenant pays me his rent duly: and if there is tenant in tail, or for life, remainder in tail, &c. and the first tenant in tail or for life, bargains and sells the land by deed enrolled, and levies a fine to the bargainee, the remainders are not bound; *for the law adjudges them always in possession*. 9 *Rep.* 106.

Lessees who pretend title to the inheritance of the lands, cannot by fine bar the inheritance. 3 *Rep.* 77. But if a lease is made for years, and the lessor before entry of the lessee levies a fine with proclamation, and the lessee doth not make his claim within five years, the lessee is barred, and no relief can be had for him; for though the lessee for years cannot levy a fine, yet he shall be barred by a fine levied by the tenant of the land, &c. 5 *Rep.* 124. If a person hath a remainder depending on an estate for years, and the termor is disseised, and a fine is levied and five years pass, &c. the termor and reversioner are barred: because the termor might presently have entered, and he in remainder had an assise, *West.* § 183. In case a person enters upon, and puts out a copyholder, and the disseisor doth levy a fine of the lands, if the copyholder suffer five years to pass after the disseisin and fine, without making any claim, the interest of the copyholder, and his lord, are hereby barred for ever: And if a copyholder makes a feoffment in fee upon good consideration, and the feoffee levies a fine with proclamations, and five years pass, the lord is barred; but if a copyholder himself levies a fine,

and five years do pass, the lord is not barred, for the copyholder not having a freehold, the fine will be void. *Wood's Inst.* 247, 248.

A fine of *cestui que trust* shall bar and transfer a trust, as it would an estate at law, if it were on a good consideration. *Chan. Rep.* 49. And it is said that such a fine with proclamations and five years' non-claim will bar the remainder of a trust estate. 1 *Vern.* 226. And fines of *cestui que use* are as good if levied of immediate possessions, &c. 2 *Nels. Abr.* 860.

Where the ancestor is barred by the fine, there for the most part the heir is barred also. 9 *Rep.* 105. Although the issue *in tail* be within age, out of the realm, &c. when a fine is had and the proclamations passed, the estate-tail shall be barred. 3 *Rep.* 84. The tenant in tail, to him and the heirs male of his body, hath three sons, the second levies a fine in the life of the father, and the father dies; here the eldest is not barred. But if the elder die without issue, living the second, it is a bar to the third. *Hob.* 333. *Jenk. Cent.* 96. Tenant in tail discontinues: the discontinuance levies a fine with proclamations, and five years pass without claim in the life of tenant in tail: in this case the issue may have a *formedon*, and shall not be barred; for his father could not claim. It is otherwise where he is disseised, and the disseisor levies such fine; there the tenant in tail may claim, &c. *Jenk. Cent.* 192.

A tenant for life, and he that is next in remainder in tail join in a fine; it is a good bar to the issue in tail for ever, so long as that estate-tail shall continue. 10 *Rep.* 96.

If one makes his title as heir by another, and not by him that levied the fine, he is not barred. Also he that is *frivolous in blood only, and not in estate, is not within the statutes to be barred* by a fine: as if lands are given to a man and the heirs female of his body, and he hath a son and a daughter, and the son levies a fine, and dies without issue, this is no bar to the daughter; for notwithstanding she be heir to his blood, yet she is not heir to the estate, nor need make her conveyance to it by him; but if her father had levied the fine, it would have been otherwise. *Trin.* 21 *Jac.* See *Cro. Jac.* 689.

A fine, &c. cannot destroy an *executory estate*, which depends upon contingencies, as it is uncertain whether there will ever an estate in being for the fine to work upon; but a fine and recovery will bar an estate in remainder, as that is an estate vested. 1 *Lill. Abr.* 617. See tit. *Recovery*. Estates by statute-merchant, statute-staple, and *elegit*, may be barred, if a fine is levied, and those that have right suffer five years to pass without claim, &c. 5 *Rep.* 124. If a fine be levied of lands in ancient demesne it doth not bar by the statute of non-claim. *Lut.* 781. See *ante*, V.

In the case of *Bourne v. Hunt*, where tenant in tail of lands in ancient demesne levied a fine, in the court of ancient demesne for three lives with warranty; then levied a second fine with warranty to the use of himself and his heirs; and then bargained and sold to one and his heirs, the following points were determined; 1st. That a fine may be levied in courts of ancient demesne; 2dly. That such fines are no bar to the issue in tail, but that they work a discontinuance; 3dly. That the discontinuance determined with the three lives, and that the second fine made no discontinuance; 4thly. That the issue in tail have twenty years to make their entry

after the expiration of the lease for lives.—See 1 *Com. Ref.* 93. (*Rose's ed.*) *Bro. P. C.*

As *deans, bishops, parsons, &c.* are prohibited by statute to levy fines, and may not have a writ of right; they are not barred by five years' non-claim, and their non-claim will not prejudice their successors. *Plowd.* 238. 375.

By the ancient common law, he that had right was to make his claim, &c. *within a year and a day of the fine levied and the execution thereof*, or he was barred for ever: But this bar is now gone; and if fine *without proclamations* according to the common law be now levied, he that hath right may make his claim or entry, at any time to prevent the bar. *Co. Litt.* 254. 262.

Where a fine may be a bar as to some lands, and not as to other lands, see *Fitz. N. B.* 98. A fine was levied, and five years passed without bringing a writ of error; and it was held a good bar within the stat. 4 *Hen. VII. c. 14.* *Cro. Jac.* 333. But it has been adjudged that where five years pass, that shall not hinder, where the fine is erroneous. 2 *Nels. Abr.* 838.

Although a bill in equity is not such an action as will avoid a fine, if the subject matter of the suit be of legal jurisdiction, yet still in some instances the filing a bill in a court of equity, will prevent the bar ensuing from a fine and *non-claim*: and in cases of this kind the court will direct a trial at law, with an order that the defendant shall not set up a fine in bar of the plaintiff's claim: upon the same principles that such court sometimes directs that the defendants in a suit at law shall not plead the statute of limitations. 1 *Cruise*, 329. See *Pincke v. Thornycroft*, 1 *Bro. C. R.* 298. *Bro. P. C.*

A. seised in fee levied a fine to himself for life, remainder to his wife in tail-male for her jointure; had issue male; husband and wife levied a fine and suffered a recovery.—After the death of the husband and wife issue-male entered by force of the stat. 11 *Hen. VII.* and held lawful. This case is out of the letter, though within the remedy of the statute, for she neither levied the fine, &c. being sole, or with any after-taken husband, but by herself with the husband who made the jointure. *Co. Litt.* 365. b.—See further *Vin. Abr. Jointress*, (I. K.) *Bac. Abr. Discontinuance*, (D.) as to what shall be deemed a forfeiture within the stat. 11 *Hen. VII. c. 20.* and who shall take advantage of it.

A. seised in fee of lands dies, leaving *B.* his heir, a *feme covert*. Upon his death a stranger makes a tortious entry on the lands, continues in possession and levies a fine *sur consuance de droit come ceo*, with proclamations: *B.* afterwards dies under coverture, no entry having been made on her behalf to avoid the fine, leaving *C.* her heir of the age of twenty-one of sound mind, out of prison, and within the realm. The fine is a bar to the right of *C.* unless he makes his claim within five years after the death of *B.* 2 *H. Black.* 584.

VII. FINES MAY BE REVERSED FOR ERROR, so as the writ of error be brought in *twenty years, &c.* and not afterwards by stat. 10 & 11 *Wm. III. c. 14.* which twenty years are to be computed from the time of the fine levied, and not from the time the title ac-

crued. 2 *Str.* 1257. See tit. *Recovery*, and stat. 23 *Eliz. c. 3.* there stated.

No person can bring a writ of error to reverse a fine, or any judgment, that is *not entitled to land* of which the fine was levied; for the courts of law will not turn out the present tenant, unless the *demandant* can make out a *clear title, possession always carrying with it the presumption of a good title till the right owner appears*; besides, where the plaintiff in the writ of error cannot make out a title, he can receive no damage by the fine, which the writ of error always supposes to be done, though it should be erroneous; and therefore it is no less than trifling with the courts of justice, to seek relief when he cannot make it appear that he has received any injury. 1 *Roll. Abr.* 747. *Dyer*, 90. 3 *Lev.* 36.

But if there be several parties to an erroneous fine, they shall *all join* with the party that is to *enjoy* the land, though they themselves cannot have any thing. 1 *Roll. Abr.* 747. *Dyer*, 89.

There must be an *actual entry* to avoid a fine. The delivery of a declaration in ejectment does not amount to an entry sufficient for this purpose; even though the defendant appears to it, and confesses lease, entry and ouster; for there must be an actual entry made *animo clamandi*, whereas in ejectment there is only a fictitious or supposed entry for the purpose of making a demise. *Bercington v. Parkhurst, Bro. P. C.* 2 *Str.* 1076. See 1 *Vent.* 42. 3 *Burr.* 1897. *Doug.* 483. 485. But no entry is necessary where the fine is levied without proclamations; for the stat. 4 *Hen. VII. c. 24.* does not extend to such a fine, and it may be avoided at any time within twenty years. 2 *Wils.* 45. The entry, when necessary, must be made by the person who has a right to the lands, or by some one appointed by him. 1 *Inst.* 258. a.

Nothing can be assigned for error that contradicts the record; for the records of the courts of justice, being things of the greatest credit, cannot be questioned but by matters of equal notoriety with themselves; wherefore, though the matter assigned for error should be proved by witnesses of the best credit, yet the judges would not admit it. 1 *Roll. Abr.* 757.

If there be error in proclamations, it shall be taken as a good fine at common law. 3 *Rep.* 86. A fine may stand, though the proclamations according to the statute are irregular, for fines are matters of record, and remain in substance and form as they were before. *Plowd.* 265.

Hence it is, that in a writ of error to reverse a fine, the plaintiff cannot assign that the conusor died before the *teste* of the *dedimus potestatem*, because that contradicts the record of the conusance taken by the commissioners, which evidently shows, that the conusor was then alive, because they took his conusance after they were armed with the commission and the *dedimus* issued. *Dyer*, 89. b. 1 *Roll. Abr.* 757. *Cro. Eliz.* 469.

But the plaintiff in error may say, that *after* the conusance taken, and *before* the *certificate* thereof returned, the conusor died; because this is consistent with the record. 1 *Roll. Abr.* 757.

By the chirograph of a fine, the caption appeared to be on the 23d of *December*, whereas in fact the fine was not acknowledged till the 2d of *March* following, and this was offered to be proved. But the court refused to admit the evidence, being of opinion, that

no proof of the time of acknowledging a fine ought to be admitted contrary to, or against the chirograph thereof: and that the record which is the chirograph of a fine, cannot be falsified till it is vacated or reversed. *Say and Seal Ld. v. Lloyd*, 1 *Salk.* 341. 13 *Mod.* 40. *Bra. P. C.*

If there is any difference between the record of the fine, which remains in the possession of the chirographer, deemed the *principale recordum*, and the record which remains with the *custos breviarum*, the latter shall be amended, and made according to the former. 3 *Leon.* 183.

If a lessee for years, or a disseisee, or one that hath right only to a reversion or remainder, levy a fine to a stranger that hath nothing in the land, this fine will be void or voidable as to the stranger; and he that hath cause to except against it, may show that the freehold and seisin was in another at the time of the fine levied, and that *partes finis nihil habuerunt tempore levationis finis*, and by this avoid the fine: and yet a disseisor, who hath a fee-simple by wrong in him, may levy a fine to a stranger that hath nothing in the land, like unto one that is rightfully seised of land in fee, &c. and it will be a good fine. *Plowd.* 353. 3 *Rep.* 87. If the cognisor of a fine hath nothing in the land passed, at the time of the fine levied, the fine may be avoided; but where the cognisor or cognisee is seised of an estate of freehold, whether by right or by wrong, the fine will be a good fine in point of estate. 41 *Edw.* III. c. 14. 22 *Hen.* VI. c. 43.

Fines are not reversible for rasure, interlineation, misentry, &c. or any want of form; but it is otherwise if of substance. *Stat.* 23 *Eliz.* c. 3. A fine shall not be reversed for small variance, which will not hurt it; nor is there occasion for a precise form in a render upon a fine, because it is only an *amicable assurance* upon record. 5 *Rep.* 38. If a fine be levied of lands in a wrong parish, though the parish in which they lie be not named, it will be a good fine, and not erroneous, being an *amicable assurance*; and a fine of a close may be levied by a *lieu conus* in a town, without mentioning the town, vill, &c. *Godb.* 440. *Cro. Jac.* 574. 2 *Mod.* 47. If there be want of an original, or no writs of covenant for lands in every county; or if there is any notorious error, in the suing out a fine, or any fraud or deceit, &c. writ of error may be had to make void the fine. *Co. Litt.* 9. *Cro. Eliz.* 469. So if either of the parties dies before finished, &c. And if the cognisor of a fine die before the return of the writ of covenant, (though after the caption of the fine,) it is said it may be reversed. 3 *Salk.* 168.

If either of the parties cognisors die after the king's silver is entered, the fine shall be finished, and be good. *Cro. Eliz.* 469.

If the king's silver is not entered before the conusor's death, the fine may be reversed for error. 3 *Mod.* 140. But in 2 *Ld. Raym.* 850. it is said, if a fine be acknowledged before commissioners in the country in the long vacation, and before the next term the conusor dies, though no writ of covenant was sued, nor king's silver entered, yet the common pleas will permit the conusee to enter the fine as of *Trinity* term preceding. See further, *Vin. Abr. Fines*, F. b. 6. In the case of *Watts v. Birkett*, however, where the conusor died before the return of the writ of the covenant, the fine was set aside after it had been completed, because the post

fine, or king's silver, due at the return of the writ of covenant, and not before, became due and was paid after the death of the conusor. 1 *Wils. part 1. p.* 115.

A writ of error may be brought in *B. R.* to reverse a fine levied in *C. B.* and the transcript only, not the very record of the fine, is removed in these cases: but if the court of *B. R.* adjudge it erroneous, then a *certiorari* goes to the chirographer to certify the fine itself, and when it comes up it is cancelled. 1 *Salk.* 341. And where on a writ of error in *B. R.* to reverse a fine in *C. B.* the fine was affirmed, a *writ of error coram vobis residen'* hath been allowed to lie. *Ibid.* 357. The court of *B. R.* will not reverse a fine without a *scire facias* returned against the tertenant, because the cognisees are but nominal persons. *Ibid.* 339. Though a fine may be set aside, by pleading that neither of the parties had any thing in the estate, at the time of levying the fine, yet those that are privy to the person that levied the fine, are estopped to plead this plea. 3 *Rep.* 88. In pleading a fine or recovery to uses, the deed need not be set forth; but the pleader is to say, that the fine, &c. was levied to such uses, and produce the deeds in evidence to prove the uses. 8 *Wm.* III. *B. R.*

Fines may be avoided where they are obtained by fraud, covin, or deceit, though there be no error in the process; and that may be done either by writ of *deceit* or *averment*, setting forth the fraud or covin. *Cro. Eliz.* 471.

Thus if a fine be levied of land in ancient demesne, the lord shall have a writ of *deceit* against the conusor and the tenant, and by that avoid the fine. *Fitz. N. B.* 98. a. *Moor.* 6. See *ante*, V. VI.

If a fine be levied to secret uses to deceive a purchaser, and the conusee pleads the fine in bar, the purchaser may aver the fraud in avoidance of the fine, by 27 *Eliz. cap.* 4.; and such averment is not contrary to the record, because it admits the fine, but sets it aside for the covin and fraud in obtaining it. 3 *Co.* 8. a. *Plowd.* 49. a.

So if a fine be levied upon a *usurious contract*, it may be avoided by *averment*, because such fine being levied for ends the law has prohibited, the law will not encourage any evasion out of the act, nor suffer such *usurious contracts* to be supported by the solemn acts of the courts of justice against the intention of the act. 3 *Co.* 80.

A fraudulent obtaining of a fine, or irregularity therein, cannot be relieved against in *chancery*; but the relief must be sought in the court where the fine was levied, though the officers may be examined and punished, if they did it *criminaliter*. And where one was personated on levying a fine, it was not set aside in equity, but a reconveyance ordered of the land. *Prec. Ch.* 150, 151. For though the court of *chancery* does not set aside a fine so fraudulently obtained, nor send the party aggrieved to the court of *C. P.* to get it reversed, yet it considers all those who have taken an estate by such a fine, with notice of the fraud, as trustees for the persons who have been defrauded, and decrees a reconveyance of the lands, on the general ground of laying hold of the ill conscience of the parties to make them do that which is necessary for restoring matters to their situation. 1 *Cruise*, 314. See *Toth.* 101. 1 *Eq. Abr.* 259. 1 *Vez.* 289. 2 *Vern.* 307.

In some cases the court will vacate a fine upon motion to prevent the parties the trouble and expense of a writ of error. 3 *Lev.* 36. 2 *Wils.* 115. In *Hubert's* case, (*Cro. Eliz.* 521.) where one levied a fine in the name of another, not privy nor consenting thereto, the fine was declared void by a *vacat* on the roll; and the lord keeper in that case said he had always noted this difference: if one of my name levy a fine of my land, I may well confess and avoid the fine by showing the especial matter, for that stands well with the fine. But if a stranger who is not of my name levies a fine of my land in my name, I shall not be received to aver, that I did not levy the fine, but another in my name; for that is merely contrary to the record; and so it is of all recognisances, and other matters of record; but I conceive when the fraud appears to the court, as here, they may well enter a *vacat* on the roll, and so make it no fine; although the party cannot avoid it by averment during the time that it remains as a record. The offence of levying a fine in another's name is punished with death by the stat. 2 *Jac.* I. c. 26. before mentioned. See *ante*, I. 3. *ad fin.* If a fine be levied by a person who got possession under a forged deed, equity will decree against the fine. 2 *Atk.* 380.

A record of a fine may be amended (if the king's silver is paid) for misprision of the clerk. 5 *Reph.* 43.

While the parties are alive, the court will not grant leave for the amendment of a fine, in the christian name of the plaintiff, for that amounts to making a new fine. 2 *Black. Rep.* 816. Neither while the parties are alive will they permit the fine to be amended in the term. 2 *Black. Rep.* 783. 3 *Wils.* 249, 250.

Where the deed to lead the uses is general, and it appears only by affidavit that the intent was to levy the fine of a greater number of acres than it mentions, the court will not permit an amendment to increase the number of acres. 2 *Black. Rep.* 202, 203.

The court refused to amend a fine passed two years before, by altering the surnames of the deforciant, though it was sworn that a wrong name had been inserted by mistake. 2 *Bos. & Pull.* 455.

Where one of the deeds to lead the uses of a fine, the lease, contained the word *tithes*, but the other deed, the release, omitted that word, the court refused to amend the writ of entry by inserting the word *tithes*, though the release had the words all "hereditaments and appurtenances whatever to the said lands, &c. belonging or in any way appertaining." 3 *Bos. & Pull.* 362.

When fines may be set aside in equity, see *ante*, and 1 *Eq. Abr.* 258. 2 *Eq. Abr.* 474. When avoided for fraud or aided when defective; *Com. Dig. Chancery*, (3 N.) 1 *Ves.* 289. More fully how fines may be avoided or reversed, and by whom; *Com. Dig. Fine*, (H); *Pleader*, (3 B.) 9. *Vin. Abr. Fine*, (D.) 11. *Bac. Abr. Fines*, 11.

For further matter relative to fines in general, see 3 *Com. Dig.* and *Viner's Abr.* tit. *Fines*, *Sheph. Touchst.* c. 2. *Cruise on Fines*, and this *Dict.* tit. *Recovery*.

FINE ADNULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQUO DOMINICO. A writ directed to the justices of C. B. for annulling a fine levied of lands in *ancient demesnes*, to the prejudice of the lord. *Reg. Orig.* 15. See tit. *Fine*.

FINES FOR ALIENATIONS, Were fines paid to the king by his

tenants in *chief*, for license to *alien* their lands according to the stat. 1 *Edw.* III. c. 12. but these are taken away by the stat. 12 *Car.* II. c. 24. abolishing all tenures but free and common socage.

The premiums given on renewal of leases, are also termed fines; and there are fines for alienations of copyholds paid to the lord. See tit. *Lease, Copyhold*.

FINES, FOR OFFENCES. Fine, in this sense, is amends, pecuniary punishment, or recompense for an offence committed against the king and his laws, or against the lord of a manor. In which case a man is said *finem facere de transgressionè cum rege, &c.* *Reg. Jud. f. 25. a. Cowel.*

It seems that originally all punishments were corporal; but that 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 pecuniary, whereby they found their own advantage.

This begat this distinction between the greater and the lesser offences; for in the *crimina majora* there was at least a fine to the king, which was levied by a *capiatur*; but upon the lesser offences there was only an amercement, which was affeered, and for which a *distringas* or action of debt lay. 2 *New Abr.* 502.

The discretionary *finès* (and discretionary length of imprisonment) which the courts of justice are enabled to impose, may seem an exception to the general rule, that the punishment of every offence is ascertained by the law. But the *general nature* of the punishment is in these, as in other cases, fixed and determinate, though the duration and quantity of each must frequently vary, from the aggravations, or otherwise, of the offence, the quality and condition of the parties, and from innumerable other circumstances.

The *quantum* in particular of pecuniary fines, neither can nor ought to be ascertained by an invariable law. Our statute law, therefore, has not often ascertained the quantity of fines, nor the common law, ever; it directing certain offences to be punished by fine in general, without specifying the certain sum, which is fully sufficient, when we consider that however unlimited the power of the court may seem, it is far from being wholly arbitrary; but its discretion is regulated by law. For the bill of rights, stat. 1 *W. & M. st. 2. c. 2.* has particularly declared, that excessive fines ought not to be imposed, nor cruel and unusual punishments inflicted; and the same statute further declares, that all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void. Now the bill of rights was only declaratory of the old constitutional law; and accordingly we find it expressly holden, long before, that all such previous grants are void: since thereby, many times, undue means, and more violent prosecution, would be used for private lucre, than the quiet and just proceeding of law would permit. 2 *Inst.* 48.

The reasonableness of fines in criminal cases has also been usually regulated by the determination of *Magna Charta*, c. 14. concerning amercements for misbehaviour by the suitors in matters of civil right. "*Liber homo non amercietur pro parvo delicto nisi secundum modum ipsius delicti; et pro magno delicto, secundum mag-*

mitudinem delicti; salvo contemento suo: et mercator eodem modo, salvâ mercandisâ suâ; et villanus eodem modo amercietur, salvo wainagio suo." A rule that obtained, even in Henry II.'s time, (*Glan. l. 9. cc. 8. 11.*) and means only, that no man shall have a larger amercement imposed upon him than his circumstances or personal estate will bear; saving to the landholder his contenment or land, to the trader his merchandisc, and to the countryman his wainage or team and instruments of husbandry. In order to ascertain which, the great charter also directs, that the amercement, which is always inflicted in general terms, (*sit in misericordia*) shall be set, *ponatur*, or reduced to a certainty by the oath of good and lawful men of the neighbourhood; which method, of liquidating the amercement to a precise sum, was usually performed in the superior courts by the assessment or *affeerment* of the coroner, a sworn officer chosen by the neighbourhood, under the equity of the stat. *Westm. 1. c. 18.* and then the judges estreated them into the exchequer. *Fitz. N. B. 76.* But in the court-leet and court-baron it is still performed by *affeerors* or suitors sworn to *affeere*, that is, tax and moderate the general amercement according to the particular circumstances of the offence and the offender: the affeeror's oath is conceived in the very terms of *Magna Charta. Fitzh. Surv. c. 11.* Amercements imposed by the superior courts on their own officers and ministers, were affeered by the judges themselves; but when a pecuniary mulct was inflicted by them on a stranger, (not being party to any suit,) it was then denominated a fine. *8 Rep. 40.* And the ancient practice was, when any such fine was imposed, to inquire by a jury *quantum inde regi dare valeat per annum, salva sustentatione sua et uxoris, et liberorum suorum. Gilb. Exch. c. 5.* And since the disuse of such inquest, it is never usual to assess a larger fine than a man is able to pay, without touching the implements of his livelihood; but to inflict corporal punishment, or a limited imprisonment, instead of such fine as might amount to imprisonment for life. And this is the reason why fines in the king's court are frequently denominated ransoms, because the penalty must otherwise fall upon a man's person, unless it be redeemed or ransomed by a pecuniary fine. *Mirr. c. 5. § 3. Lamb. Eir. 575.* According to an ancient maxim, *qui non habet in crumenâ luat in corpore;* yet where any statute speaks both of fine and ransom, it is holden that the ransom shall be treble to the fine at least. *Dyer, 232. See 4 Comm. 378—380.*

I. Who may fine and amerce, and for what.

II. How Fines, &c. may be mitigated and aggravated; as also how they may be recovered, and to whom they are payable.

I. Where a statute imposes a fine at the will and pleasure of the king, that is intended of his judges, who are to impose the fine. *4 Inst. 71.* Courts of record only can fine and imprison a person; (except as aftermentioned.) And such a court may fine for an offence committed in court in their view, or by confession of the party recorded in court. *1 Lill. Abr. 621.* A man shall be

fined and imprisoned for all contempts done to any court of record, against the commandment of the king's writ, &c. 9 *Rep.* 60.

If a person is arrested coming to the courts of justice to answer a writ, the offender doing it shall be fined for the contempt. But there has been a difference made where it is done by the plaintiff in the writ, and a stranger, who it is said shall not be fined. 9 *Hen. VI. c. 55.* 1 *Darv.* 469.

If an officer of the court neglects his duty, and gives not due attendance; a clerk of the peace doth not draw an indictment well in matter of form, or return thereof, upon a *certiorari* to remove the indictment in *B. R.*; if a sheriff, &c. make an insufficient return of a *habeas corpus* issuing out of *B. R.* &c.; or if justices of the peace proceed on an indictment after a *certiorari* issued to remove the indictment; the court may fine them. 1 *Lill.* 620. When a juror at the bar will not be sworn, he may be fined. 7 *Hen. VI. c. 12.* And if one of the jury depart without giving his verdict; or any of the jury give their verdict to the court before they are all agreed, they may be fined. 8 *Rep.* 38. 40 *Ass.* 10.

Also the sheriff in his tourn, and the steward of a court-leet, have a discretionary power, either to award a fine or amercement for contempt to the court; as for a suitor's refusing to be sworn, &c. and the steward of a court-leet may either amerce or fine an offender, upon a presentment, &c. for an offence not capital, within his jurisdiction. *Keilw.* 66. *Kitchin,* 43. 51.

It is said, that some courts may imprison, but not fine, as the constables at the *petit* sessions. 11 *Co.* 44. 1 *Roll. Ref.* 74. 11 *Co.* 43. b. Also some courts cannot fine or imprison, but amerce, as the county, hundred, &c. 11 *Co.* 43. b. 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*. 11 *Co.* 44. a.

Every court of record may enjoin the people to keep silence under a pain, and impose reasonable fines, not only on such as shall be convicted before them of any crime, on a formal prosecution, but also on all such as shall be guilty of any contempt in the face of the court; as by giving opprobrious language to the judge, or disturbing the court, or obstinately refusing to do their duty as officers of the court. 11 *Hen. VI.* 12. b. 1 *Roll. Abr.* 219. 8 *Co.* 38. 11 *Co.* 43. *Cro. Eliz.* 581. 1 *Sid.* 145. 6 *Term Ref.* *K. B.* 530.

If a dead body in prison, or other place whereon an inquest ought to be taken, be interred, or suffered to lie so long that it putrify, before the coroner hath viewed it, the gaoler or township shall be amerced. 1 *Keilw.* 278. 2 *Hawk. P. C.* If any homicide be committed, or dangerous wound given, whether with or without malice, or even by misadventure, or in self-defence, in any town, or in the lanes or fields thereof, in the day-time, and the offender escape, the town shall be amerced; and if out of a town, the hundred shall be amerced. 3 *Inst.* 53. 4 *Inst.* 183. *Cro. Car.* 252. 3 *Leon.* 207. 2 *Inst.* 315. *Dyer,* 210.

Besides fines imposed for offences, it seems, that regularly there was a fine or amercement in all actions; for if the plaintiff or demandant did not prevail, it was thought reasonable that he should

be punished for his unjust vexation; and therefore there was judgment against him, *quod sit in misericordia pro falso clamore*. 8 Co. 39. *Fitz. N. B.* 75.

Hence when the plaintiff takes out a writ, the sheriff, before the return of it, was formerly obliged to take pledges of prosecution, which, when fines and amercements were considerable, were real and responsible persons, and answerable for those amercements, but being now so very inconsiderable, that they are never levied, they are only formal pledges entered, *viz. John Doe and Richard Roe*. 1 *Saund.* 227. See this *Dict. tit. Bail*.

In all actions, where the judgment is against the defendant, it was to be entered with a *misericordia*, or a *cafiatur*; and herein the difference is, that if it be an action of debt, or founded on a contract, the entry is *ideo in misericordia*, without assessing any sum in certain, which was afterwards assessed by the coroners in the proper county; but if it were in action of trespass, the court set the fine, and levied it by a *cafiatur*. 8 Co. 60. 1 *Roll. Abr.* 212. 219. *Cro. Eliz.* 844. *Cro. Jac.* 255. Therefore,

In actions *quare vi et armis*, as trespass, and the like; if judgment pass against the defendant in a court of record, he shall be fined. 8 *Repl.* 59. But in actions which have not something of force, or fraud, or deceit to the court; if the defendant come the first day he is called, and tender the thing demanded to the plaintiff, he is not to be fined. 4 *Repl.* 49. 8 *Repl.* 59, 60. 99. 3 *Ass.* 9. 22 *Ass.* 82. 1 *Danv. Abr.* 471. 1 *Vent.* 116.

All *cafiatur fines* are taken away by stat. 4 & 5 *W. & M. c.* 12. See *tit. Capias pro Fine*.

II. A fine may be mitigated the same term it was set, being under the power of the court during that time; but not afterwards. *T. Raym.* 376. And fines assessed in court by judgment upon an information, cannot be afterwards mitigated. *Cro. Car.* 251. If a fine certain is imposed by statute on any conviction, the court cannot mitigate it; but if the party comes in before conviction, and submits to the court, they may assess a less fine; for he is not convicted, and perhaps never might. The court of *exchequer* may mitigate a fine certain, because it is a court of equity, and they have a privy seal for it. 3 *Salk.* 33.

If an excessive fine is imposed at the sessions, it may be mitigated at the king's bench. 1 *Vent.* 336. A defendant being indicted for an assault, confessed it, and submitted to a small fine; and it was adjudged that in such a case he may produce affidavits to prove on the prosecutor, that it was *son assault*, and that in mitigation of the fine; though this cannot be done after he is found guilty. 1 *Salk.* 55. If a person is found guilty of a misdemeanor upon indictment, and fined, he cannot move to mitigate the fine, unless he appear in person; but one absent may submit a fine, if the clerk in court will undertake to pay it. 1 *Vent.* 209. 207. 1 *Salk.* 55. 2 *Hawk.* 446.

The court of *B. R.* refused to mitigate a fine imposed by the court of great sessions in *Wales*, on the sheriff of the county for not attending; the record whereof was removed by *certiorari*. 8 *Term Repl. K. B.* 615.

It is a common practice in the court of *B. R.* to give a defendant leave to speak with the prosecutor, *i. e.* to make satisfaction for the costs of the prosecution, and also for damages sustained, that there may be an end of suits; the court at the same time showing, on that account, an inclination to set a moderate fine on behalf of the king. *Wood's Inst.* 653. And in cases where costs are not given by law, after a prosecutor has accepted costs from the defendant, he cannot aggravate the fine; because having no right to demand costs, if he takes them, it shall be intended by way of satisfaction of the wrong. *2 Hawk. P. C.* 292. See this *Dict. tit. Costs.*

All fines belong to the king, and the reason is *because the courts of justice are supported at his charge*; and wherever the law puts the king to any charge for the support and protection of his people, it provides money for that purpose. *Bract.* 129. When a person is fined to the king, notwithstanding the body remains in prison, it is said the king shall be satisfied the fine out of the offender's estate. *4 Leon. c.* 393.

By the common law, the king, or lord may, at their election, distrain, or bring an action of debt for a fine or amercement. *Cro. Eliz.* 581. *Sav.* 93. *Rast. Ent.* 151. 553. 606. *2 Hen. IV.* 24. b. 10 *Hen. VI.* 7. *Raym.* 68. But with respect to fines, set in inferior courts, every avowry, or declaration of this kind ought expressly to show, that the offence was committed within the jurisdiction of the court, for if it were not, all the proceedings were *coram non judice*, and a court shall not be presumed to have jurisdiction where it doth not appear to have one. *Hob.* 129. *Rast. Ent.* 553. *Co. Ent.* 572. Also it is advisable to allege, that the offence was committed, as well as presented, and to show the names of the presentors and the affectors in setting forth a presentment or affectment, and also to show that proper notice was given of holding the court. But for this, see *Hawk. P. C.*

Of common right, a distress is incident to every fine and amercement, in a tourn or leet, for offences within the jurisdiction thereof; but if the offence were only the neglect of a duty created by custom, and of a private nature, it is clear, that *there must be a custom to warrant a distress*, and perhaps such custom is also necessary, though the duty be of a public nature. *2 Hawk. P. C.*

Also the sheriff, or lord may for such fines or amercements distrain the goods of the offender even in the highway, or in land not holden of the lord, unless such land be in possession of the crown. *1 Roll. Abr.* 670. *2 Inst.* 104. But such fines and amercements being for a personal offence, no stranger's beasts can lawfully be distrained for them, though they have been *levant and couchant* upon the lands of the offender. *Owen*, 146. *Novy*, 20.

A joint award of one fine against divers persons is erroneous; it ought to be several against each defendant, for otherwise one who hath paid his part might be continued in prison till the others have paid theirs, which would be in effect to punish for the offence of another. *2 Hawk. P. C.* Fines to the king are *estreated* into the *exchequer*. See *Joint Fines*.

FINES TO THE KING, *finés le roy.*] Under this head are included fines for *original writs*. On originals on trespass on the

case, where the damages are laid above 40*l.* a fine is paid, *viz.* from 40*l.* damages to 100 marks, (66*l.* 13*s.* 4*d.*) 6*s.* 8*d.* From 100 marks to 100*l.* the fine is 10*s.* From 100*l.* to 200 marks, 13*s.* 4*d.* From 200 to 250 marks, 16*s.* 8*d.* From 250 to 300 marks, or 200*l.* it is 1*l.* fine; and so for every 100 marks more, you pay 6*s.* 8*d.* and every 100*l.* further 10*s.* Every 100*l.* pays 10*s.* fine. *R. H.* 6. *W. & M.* Fines are also paid for original writs in *debt*; for every writ of 40*l.* debt, 6*s.* 8*d.* and if it be of 100 marks, but 6*s.* 8*d.* and for every 100 marks, 6*s.* 8*d.* &c. also for every writ of *plea of land*, if it be not a writ of right patent, which is for the yearly value of 5 marks, 6*s.* 8*d.* and so according to that rate. 19 *Hen.* VI. 44. 7 *Hen.* VI. 33. *New Nat. Brev.* 212. See tit. *Fines of Lands.*

FINE NON CAPIENDO PRO PULCHRE PLACITANDO. A person upon conviction of any offence by jury, hath his *lands and goods* taken into the king's hand, and his body is committed to prison; to be remitted his imprisonment and have his lands and goods redelivered him, on obtaining favour for a sum of money, &c. *Reg. Orig. fol.* 142.

FINE PRO REDISSEISINA CAPIENDA, A writ that lies for the release of one imprisoned for a *redisseisin*, on payment of reasonable fine. *Reg. Orig.* 222.

FINE FORCE, Is where a person is *forced* to do that which he can no ways help; so that it seems to signify an absolute necessity or constraint not avoidable. *Old Nat. Brev.* 68. Stat. 35 *Hen.* VIII. c. 12.

FINIRE, To fine, or pay a fine upon composition, and making satisfaction, &c. The same with *finem facere*, mentioned in *Leg. Hen.* I. c. 53. And in *Brompton*, *p.* 105. and in *Hovedon*, *p.* 783.

FINITIO, Death, so called; because *vita finitur morte.* *Blount.*

FINORS OF GOLD AND SILVER, Are those persons who purify and separate gold and silver from coarser metals, by fire and water. They are not to allay it; or sell the same, save only to the master of the mint, goldsmiths, &c. stat. 4 *Hen.* VII. c. 2.

FIRDFARE AND FIRDWITE, See *Ferdfare* and *Ferdwit.*

FIRDERINGA, A preparation to go into the army. *Leg. Hen.* I.

FIRE AND FIRE-COCKS. By stat. 14 *Geo.* III. c. 78. (the last building act,) churchwardens in *London* and within the bills of mortality, are to fix *fire-cocks*, &c. at proper distances in streets, and keep a large engine and hand-engine for extinguishing fire, and ladders and fire-escapes, under the penalty of 10*l.* § 75. And to prevent fires, workmen in the city of *London*, &c. must erect party walls between buildings of brick or stone, of a certain thickness, &c. under penalties, inflicted by various sections of the act. On the breaking out of any fire, all the constables and beadles shall repair to the place with their staves to protect property, and be assisting in putting out the fire, and causing people to work. § 85. No action shall be had against any person in whose house or chamber a fire shall accidentally begin. § 86. See this *Dict.* tit. *Waste*, and also stat. 6 *Ann.* c. 31. now said to be made perpetual. 1 *Inst.* 530. in *n.* 7.

By the said stat. 14 *Geo.* III. c. 78. rewards for assistance are payable to the first turncock 10*s.* To the first engine *not exceeding* 30*s.* The second *not exceeding* 20*s.* The third 10*s.* To

be paid by the churchwardens or overseers, but not without the approbation of an alderman or justice of the peace. The churchwardens, &c. to be repaid by the inhabitant if the fire begins in a chimney. § 76, 77, 78. Insurance offices may lay out the insurance in rebuilding the premises, if the party suffering does not give security to do so: or in case of disagreement, not settled within 60 days. § 83.

Firemen exempt from being impressed. § 82. Penalty on servants firing houses by negligence, 100*l.* or eighteen months imprisonment. § 84. Restrictions on boiling turpentine. 25 *Geo.* III. c. 77. See this *Dict.* tit. *Arson, Burning, Police.*

FIREBARE, Sax.] A beacon or high tower by the sea-side, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy. See tit. *Beacon.*

FIREBOTE, Fuel for firing for necessary use, allowed by law, to tenants out of the lands, &c. granted them. See *Estovers.*

FIRE-ORDEAL, See tit. *Ordeal.*

FIRE-WORKS. No person whatsoever shall make, sell, &c. squibs, rockets, serpents, &c. or cases, moulds, &c. for making such squibs, and every such offence shall be adjudged a common nuisance, and persons making or selling squibs shall forfeit 5*l.*

Persons throwing or firing squibs, &c. or suffering them, &c. to be thrown or fired from their houses, incur a penalty of 20*s.* Likewise persons throwing, casting or firing, or aiding or assisting in the throwing, casting or firing of any squibs, rockets, serpents, or other fire-works, in or into any public street, house, shop, river, highway, road or passage, incur the like penalty of 20*s.* and on non-payment may be committed to the house of correction. Stat. 9 & 10 *Wm.* III. c. 7.

This statute does not take from any person injured, by throwing of squibs, &c. the remedy at common law; for the party may maintain a special action on the case or trespass, &c. for recovery of full damages.

FIRE AND SWORD, Letters of; these anciently issued from the privy council in *Scotland*, directed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge, or judgment of a court.

FIRMA, Victuals or provisions; also rent, &c. See tit. *Farm.*

FIRMA ALBA, Rent of lands let to farm, paid in silver, not in provision for the lord's house. See *Alba Firma.*

FIRMA NOCTIS, A custom or tribute anciently paid towards the entertainment of the king for one night according to *Domesday.* Comes Meriton T. R. E. reddebat firmam unius noctis, &c. i. e. provision or entertainment for one night, or the value of it. *Templ. Reg. Edw. Confess.*

FIRMAM REGIS, Anciently *pro villâ regia, seu regis manerio.* *Spelm.*

FIRMATIO, *firmationis tempus.* Doe season, as opposed to buck season. 31 *Hen.* III. *Firmatio* signifies also a supplying with food. *Leg. Ina, cap. 34.*

FIRMURA, *free firmage.* *W. de Cressi* gave to the monks of *Blyth*, a mill, *cum libera firmura* of the dam of it. *Reg. de Blyth.*

This has been interpreted liberty to scour and repair the mill dam, and carry away the soil, &c. *Blount*.

FIRST-FRUITS, *primitia*.] The profits after avoidance, of every spiritual living for the first year, according to the valuation thereof in the king's books. These were given in ancient times to the pope throughout all christendom: and were first claimed by him in *England* of such foreigners as he bestowed benefices on here by way of provision; afterwards they were demanded of the clerks of all spiritual patrons, and at length of all other clerks on their admission to benefices: but upon the throwing off the pope's supremacy in the reign of *Hen. VIII.* they were translated to, and vested in the king; as appears by the stat. 26 *Hen. VIII. c. 3.* and a new *valor beneficiorum*, was then made by which the clergy are at present rated. This *valor beneficiorum* is what is commonly called, the king's books; a transcript of which is given in *Ecton's Thesaurus* and *Bacon's Liber Regis*. And for the ordering thereof, there was a court erected, 32 *Hen. VIII.* but dissolved soon after.

Though by stat. 1 *Eliz. c. 4.* these profits are reduced again to the crown, yet the court was never restored; for all matters formerly handled therein, were transferred to the *exchequer*, within the survey of which court they now remain.

By stat. 26 *Hen. VIII. c. 3.* (extended to *Ireland* by *Irish act*, 28 *Hen. VIII. c. 26.*) the lord chancellor, bishops, &c. are empowered to examine into the value of every ecclesiastical benefice and preferment in their several dioceses; and clergymen entered on their livings before the *first-fruits* are paid or compounded for, are 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 lives the year, and then dies, or be ousted in six months after, but half the first fruits shall be paid; if a year and a half, three quarters of them; and if two years then the whole; not otherwise. The archbishops and bishops, have four years allowed for the payment, and shall pay one quarter every year, if they live so long upon the bishopric: other dignitaries in the church pay theirs in the same manner as rectors and vicars. By the stat. 27 *Hen. VIII. c. 8.* no tenths are to be paid for the first year, as then the *first-fruits* are due, and by several statutes of *Anne*, if a benefice be under 50*l.* per annum clear yearly value, it shall be discharged of the payment of *first-fruits* and tenths.

This queen also restored to the church what had at first been thus indirectly taken from it, not 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, confirmed by stat. 2 *Ann. c. 11.* 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 ann.* See 1 *Comm.* 285, 286. *cum notis, ib.* See also the stats. 5 *Ann. c.* 24. 6 *Ann. c.* 27. 1 *Geo. I. c.* 10. and 45 *Geo. III. c.* 84. In Ireland similar benefits are secured under the board of *first-fruits* by the *Irish* acts; 2 *Geo. I. c.* 15. 8 *Geo. I. c.* 12. 10 *Geo. I. c.* 7. 1 *Geo. II. c.* 18. 9 *Geo. II. c.* 12. 29 *Geo. II. c.* 18. 11 & 12 *Geo. III. c.* 16. 25 *Geo. III. c.* 63. 29 *Geo. III. c.* 26. and by annual grants of parliament. See also the acts 43 *Geo. III. c.* 106. 46 *Geo. III. c.* 60. and 48 *Geo. III. c.* 65. and more fully this *Dict. tit. Clergy, Parson, &c.*

FISH, FISHERIES AND FISHING.

MANY acts of parliament have been made to regulate domestic and foreign fisheries, and the sale of fish. The following is a very general abridgment of them.

By stat. 1 *Eliz. c.* 17. (made perpetual by stat. 3 *Car. I. c.* 4.) no fisherman shall use any net or engine, to destroy the fry of fish: and persons using nets for that purpose, or taking salmon or trout out of season, or any fish under certain lengths, are liable to forfeit 20*s.* and justices of peace, and the lords of leets have power to put the acts in force. By stat. 2 *Hen. VI. c.* 15. no person may fasten nets, &c. across rivers to destroy fish, and disturb passage of vessels, on pain of 5*l.* By stat. 31 *Hen. VIII. c.* 2. none shall fish in any pond or mote, &c. without the owner's license, on pain of three months' imprisonment. Under stats. 22 & 23 *Car. II. c.* 25. and 4 *W. & M. c.* 23. no person shall take any fish in any river, without the consent of the owner, under the penalty of 10*s.* for the use of the poor, and treble damage to the party grieved, leviable by distress of goods; and for want of distress, the offender is to be committed to the house of correction for a month: also nets, angles, &c. of poachers may be seized, by the owners of rivers, or by any persons by warrant from a justice of peace, &c. See *tit. Game, and poort, Fishing, right of.*

By stat. 5 *Geo. III. c.* 14. persons stealing or destroying fish in fish ponds, or receiving stolen fish, are to be transported for seven years. See *tit. Black Act.* And a forfeiture of 5*l.* to the owner of the fishery, is made payable by persons taking or destroying (or attempting so to do) any fish in any river or other water within any enclosed ground, being private property.

The stat. 4 & 5 *Ann. c.* 21. was made for the increase and preservation of salmon in rivers in the counties of *Southampton* and *Wilts*; requiring that no salmon be taken between the 1st of *August* and 12th of *November*, or under size, &c. And by stat. 1 *Geo. I. c.* 18. (altered as to the river *Ribble*, by stat. 28 *Geo. II. c.* 26.) salmon taken in the rivers *Severn*, *Wye*, *Were*, *Ouse*, &c. are to be 18 inches long at least; or the persons catching them shall forfeit 5*l.*, and sea fish sold must be of the length following, viz. *bret* and *turbot* sixteen inches, *brill* and *pearl* fourteen, *codlin*, *bass* and *mullet* twelve, *sole* and *plaice* eight, *flounders* seven, *whiting* six inches long, &c. on pain of forfeiting 20*s.* to the poor, and the fish. By stat. 9 *Geo. II. c.* 33. persons that import any fish, contrary to

the 1 Geo. I. c. 18. for better preventing *fresh* fish taken by *foreigners* being imported into this kingdom, &c. shall forfeit 100*l.* to be recovered in the courts at *Westminster*, one moiety to informers, and the other to the poor; and masters of smacks, hoys, boats, &c. in which the fish shall be imported, or brought on shore, forfeit 50*l.*

Besides the above, thus particularized, the following statutes relate to the same subject, *West.* 2. (13 *Edw.* I.) c. 47. and 13 *Rich.* II. c. 19. (altered by 9 *Ann.* c. 26. 1 *Geo.* I. st. 2. c. 18. 23 *Geo.* II. c. 26. 43 *Geo.* III. c. lxi. and 45 *Geo.* III. c. xxxiii.) as to *salmon* and their fence months. 31 *Edw.* III. st. 2. c. 1. and 35 *Edw.* III. (*Ordin. of Herrings*) as to forestalling *herrings*. 31 *Edw.* III. st. 2. c. 2. selling of *herrings* at *Yarmouth*. *Id.* c. 3. as to *stock-fish* and *salmon*. 17 *Rich.* II. c. 9. appoints justices to be conservators of rivers. 14 *Hen.* VI. c. 6. as to foreigners selling fish. 22 *Edw.* IV. c. 2. 11 *Hen.* VII. c. 23. as to *pickled salmon* and *herrings*. 2 & 3 *Edw.* VI. c. 6. forbids the granting licenses to fish in foreign parts. 5 *Eliz.* c. 5. as to toll of fish. 39 *Eliz.* c. 10. (continued by 3 *Car.* I. c. 4. and 16 *Car.* I. c. 4. though repealed by 43 *Eliz.* c. 9.) as to aliens fishing. 1 *Juc.* I. c. 23. as to trespass by herring fishers. 3 *Jac.* c. 12. wears. 13 & 14 *Car.* II. c. 28. as to *pilchard* fishery. 15 *Car.* II. c. 16. Packing *herrings*. *Newfoundland* fishery. 30 *Car.* II. c. 9. *Severn* fishery. 4 *Ann.* c. 15. *Stower* fishery. 2 *Geo.* II. c. 19. 31 *Geo.* III. c. 51. 48 *Geo.* III. c. 144. *Oyster* fishery in *Medway*, &c. (and see tit. *Oysters*.) 9 *Geo.* II. c. 33. *Lobster* fishery on the coast of *Scotland*. 11 *Geo.* III. c. 27. 15 *Geo.* III. c. 46. *Salmon* fishery in the *Tweed*. 16 *Geo.* III. c. 36. *Cornwall* *pilchard* fishery, and see also stat. 31 *Geo.* III. c. 45. 45 *Geo.* III. c. 102. 48 *Geo.* III. c. 68.

Various statutes have been made as to the particular supply and sale of fish in *London* and *Westminster*, viz.

Stat. 17 *Rich.* II. c. 9. appoints the mayor of *London* conservator of the *Thames*. Stats. 10 & 11 *Wm.* III. c. 4. 9 *Ann.* c. 26. 3 *Geo.* III. c. 27. and 2 *Geo.* III. c. 15. for regulating *Billingsgate* market, the water bailiffs' duty, and the fishmongers' company. A long and particular stat. 22 *Geo.* II. c. 49. to establish an open fish-market in *Westminster*, was not ever put in force. See stat. 30 *Geo.* III. c. 54. which vests the estate and property of the trustees of *Westminster* fish-market in the marine society. Stat. 30 *Geo.* II. c. 21. regulates the fishery in the *Thames* and *Medway*, and stat. 24 *Geo.* II. c. 44. was passed to protect officers in their duty, under the several statutes against forestallers of fish, &c. Finally the stats. 29 *Geo.* II. c. 39. and 33 *Geo.* II. c. 27. were made to regulate the sale of fish at the first hand in the fish markets in *London* and *Westminster*; and to prevent salesmen of fish buying fish to sell again on their own account; and to allow *bret* and *turbot*, *brill* and *pearl*, although under the respective dimensions mentioned in 1 *Geo.* I. c. 18. to be imported and sold: and to punish persons who shall take or sell any spawn, brood, or fry of fish, unsizable fish, or fish out of season, or smelts under the size of five inches.

By this latter act every master of a vessel is to give a true account of the several sorts of fish brought alive to the *Nore* in his vessel, and if after such arrival, he shall wilfully destroy or throw

away any of the said fish, not being unwholesome or unmarketable, &c. he is liable to be committed to the house of correction, and kept to hard labour for any time not exceeding two months nor less than one. And see farther, stat. 2 *Geo. III. c. 15.* for the better supplying the cities of *London* and *Westminster* with fish, by means of fish machines, and to reduce the exorbitant price thereof; and to protect and encourage fishermen. The stat. 29 *Geo. II. c. 39.* is altered as to the sale of eels by 42 *Geo. III. c. 19.*

For so much concerning the several national fisheries as relates to the commerce and navigation of the country, see tit. *Navigation Acts V.*

The *Newfoundland* fisheries are at present regulated under stats. 10 & 11 *Wm. III. c. 24, 25.* 15 *Geo. III. c. 31.* 26 *Geo. III. c. 26.* 28 *Geo. III. c. 35.* 29 *Geo. III. c. 53.* By 33 *Geo. III. c. 76.* a court of judicature was established there.

Greenland Fishery. Stats. 4 & 5 *W. & M. c. 17.* 1 *Ann. st. 1. c. 16.* 26 *Geo. III. c. 41.* 29 *Geo. III. c. 53.* 32 *Geo. III. c. 22.* 42 *Geo. III. c. 22.* 44 *Geo. III. c. 35* and 46 *Geo. III. c. 9.*

Southern Whale Fishery. 35 *Geo. III. c. 92.* 38 *Geo. III. c. 57.* 42 *Geo. III. c. 77.* 43 *Geo. III. c. 90.*

British Herring Fishery. 26 *Geo. III. c. 81.* 27 *Geo. III. c. 10.* 35 *Geo. III. c. 56.* 39 *Geo. III. c. 100.* 48 *Geo. III. c. 110.*

Scotch Fisheries. 13 *Geo. I. c. 26.* 30. 29 *Geo. II. c. 23.* 26 *Geo. III. c. 81.* 106. 48 *Geo. III. c. 110.*

Salt is, under certain temporary regulations, allowed to be used in the fisheries free of duty; but it is doubted how far these regulations are either effectual or beneficial.

FISHING, RIGHT OF, AND PROPERTY OF FISH. It has been held, that where the lord of the manor hath the soil on both sides the river, it is a good evidence that he hath the *right* of fishing, and it puts the proof upon him who claims a free fishery; but where a 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; for if trespass is brought for fishing there, the defendant may justify that the place where, is an arm of the sea, in which every subject of our lord the king hath and ought to have free fishery.

In the *Severn*, the soil belongs to the owners of the land on each side; and the soil of the river *Thames*, is in the king, &c. but the fishing is common to all. 1 *Mod. 105.* He who is owner of the soil of a private river, hath a separate or several fishery; and he that hath *free fishery* hath a property in the fish, and may bring a possessory action for them; but *communis piscaria* is like the case of all other commons. 2 *Salk. 637.*

There are three sorts of fisheries or *piscaries*. Free fishery; several (or separate) fishery; and common of piscary.

Common of piscary is a liberty of fishing in another man's water. 2 *Comm. 34.* 1 *Inst.* See tit. *Common.* A *free fishery*, or exclusive right of fishing in a public river, is a royal franchise: this differs from a *several fishery*; because he that has a *several fishery* must also be (or at least derive his right from) the owner of the soil. It differs also from a *common of piscary*, in that the free fishery is an exclusive right, the common of piscary is not so; and therefore in a *free fishery* a man has property in the fish before

they are caught : in a *common of piscary*, not till afterwards. 2 *Comm.* 39, 40. and 1 *Inst.* 122. (a) n. 7. which see. As to a *free fishery* no new franchise can at present be granted of it, by the express provision of *Magna Charta*, c. 16. and the franchise must be at least as old as the reign of *Hen. II.* 2 *Comm.* 417. One that has a close pond in which there are fish, may call them *pisces suos* in an indictment, &c. But he cannot call them as *bona et catalla*, if they be not in trunks. There needs no privilege to make a fish-pond ; as there doth in case of a warren. *Mod. Ca.* 183. See further, this *Dict.* tit. *Game*.

FISHERMEN. By stat. 9 *Ann. c.* 26. there shall be a master, wardens and assistants of the *Fishmongers' Company* in *London*, chosen yearly at the next court of the lord mayor and aldermen after the tenth of *June*, who are constituted a court of assistants ; and they shall meet once a month at their common hall, to regulate abuses in fishery, register the names of fishermen, and mark their boats, &c.

FISHGARTH, A dam or wear in a river, made for the taking of fish ; especially in the rivers of *Ouse* and *Humber*.

FISH ROYAL, *Whale* and *sturgeon* which the king is entitled to when either thrown on shore or caught near the coasts. *Plowd.* 315. See tit. *King*.

FISK, (from *fiscus*, the treasury.) The right of the crown, to the moveable estate of a person denounced rebel. *Scotch Dict.*

FLACO, A place covered with standing water. *Mon. Angl. tom.* 1. p. 209.

FLAX, See *Hemp*.

FLECTA, A feathered or fledged arrow ; a *fleet arrow*.

FLEDWITE or FLIGHTWITE, from Sax. *flyth, fuga, et amere, mulcta.*] In our ancient law signified a discharge from amerciaments, where a person having been a *fugitive* came to the peace of our lord the king of his own accord, or with license. *Rastal*.

FLEET, Sax, *fleot*, i. e. *flota*, a place of running water, where the tide or *float* comes up.] A *prison* in *London* so called from a river or ditch that was formerly there, on the side whereof it stood. To this prison men are usually committed for contempt to the king and his laws, particularly against the courts of justice ; or for debt, when persons are unable or unwilling to satisfy their creditors ; there are large rules, and a *warden* or *keeper* belonging to the *fleet prison*, &c. See tit. *Gaol, Gaoler, Prisoner*.

FLEET OF SHIPS, See tit. *Navy*.

FLEM, *flema*, from Sax. *flean*, to kill or slay.] An outlaw ; and by virtue of the word *flemaflare* were claimed *bona felonum* ; as may be collected from a *quo warranto*. *Temp. Edw. III.*

FLEMENEFRIT, FLEMENESFRINTHE, FLYMENAFRYN-THE.] The receiving or relieving of a fugitive or outlaw. *Leg. Ina, c.* 29. 47. *LL. Hen. I. c.* 10. 12.

FLEMESWITE, Sax.] *Fleta* interprets it *habere catalla fugitivorum*. *Lib. 1. c.* 47.

FLETA, The title of an ancient law-book, supposed to have been written by a judge who was confined in the *fleet prison*. *Temp. Edw. I. Nicholson's Historical English Library, 225.*

FLIGHERS, Masts for ships, *Mon. Angl. tom. 1. p.* 799.

FLIGHT, For crimes committed. See *Fugam fecit*.

FLOOD MARK, The mark which the sea makes on the shore, at flowing water and the highest tide: it is also called *high-water mark*.

FLORENCE, An ancient piece of *English* gold coin: every pound weight of old standard gold was to be coined into fifty *florences*, to be current at six shillings each; all which made in tail fifteen pounds, or into a proportionate number of *half florences* or *quarter pieces*; by indenture of the *mint*. 18 *Edw. III.*

FLORIN; A foreign coin; in *Spain*, 4s. 4d. *Germany*, 3s. 4d. and *Holland*, 2s.

FLOTA NAVIUM, A fleet of ships. *Rot. Francia*, 6 *Rich. II.* m. 21.

FLOTAGES, Such things as by accident swim on the top of great rivers; the word is sometimes used in the commissions of *water bailiffs*.

FLOTSAM, Is where a ship is sunk or cast away, and the goods are *floating* upon the sea. 5 *Rep.* 106. *Flotsam*, *jetsam*, and *lagan* are mentioned together; *jetsam* being where any thing is cast out of the ship when in danger, and the ship notwithstanding perisheth; and *lagan* is when heavy goods are thrown overboard before the wreck of the ship, which sink to the bottom of the sea, but are tied to a cork or buoy in order to be found again. 5 *Rep.* 106. The king shall have *flotsam*, *jetsam* and *lagan*, when the ship is lost, and the owners of the goods are not known; but not otherwise. *Fitz. N. B.* 122. Where the proprietors of the goods may be known, they have a year and a day to claim *flotsam*. 1 *Keb.* 657. *Flotsam*, *jetsam*, &c. any person may have by the king's grant, as well as the lord admiral, &c. See 1 *Comm.* 292, and this *Dict.* tit. *Wreck*.

FOCAGE, *focagium*.] *House-bote* or *fire-bote*.

FOCAL, A right of taking wood for firing. *Mon. Angl. tom.* 1. p. 779.

FODDER, Sax. *foda*, i. e. *alimentum*.] Any kind of meat for horses, or other cattle: among the *feudists* it was used for a prerogative of the prince, to be provided with corn and other meat for his horses, by his subjects, in his wars or other expeditions. *Hottom de verb. Feudal*.

FODERTORIUM, Provision or fodder, to be paid by custom to the king's purveyor. *Cartular. MS.*

FÆNUS NAUTICUM, *bottomry*. See that title; and tit. *Insurance*.

FOESA, Fr. *foisson*.] Grass, herbage. *Mon. Angl. tom.* 2. p. 506.

FOGAGE, *fogagium*.] Fog or rank after-grass, not eaten in summer. *LL. Forestar. Scot.* c. 16.

FOITERERS, Vagabonds. *Blount*. See *Faitours*.

FOLC-LANDS, Sax.] Copyhold lands; so called in the time of the *Saxons*, as charter lands were called *bocklands*, *Kitch.* 174. *Folkland* was *terra vulgi* or *popularis*, the land of the vulgar people, who had no certain estate therein, but held the same under the rents and services accustomed or agreed, at the will only of their lord the *Thane*; and it was therefore not put in writing, but accounted *frædium rusticum et ignobile*. *Spelm. of Feuds*, cap. 5. See this *Dict.* tit. *Copyhold*, *Tenure*, *Bockland*.

FOLC-MOTE, OR FOLK-MOTE, Sax: *folgemot, conventus populi.*] Is compounded of *folk, populus*, and *mote or gemote, convenire*; and signified originally, as *Somner* in his *Saxon dictionary* says, a general assembly of the people to consider of, and order matters of the commonwealth. See *Leg. Edw. Confess. cap. 35*. *Spelman* says the *folcmote* was a sort of annual parliament, or convention of the bishops, thanes, aldermen and freemen, upon every *May-day* yearly; where the laymen were sworn to defend one another and the king, and to preserve the laws of the kingdom, and then consulted of the common safety. But *Dr. Brady* infers from the laws of our *Saxon Kings* that it was an inferior court, held before the *king's reeve* or steward, every month to do *folk right*, or compose smaller differences, from whence there lay appeal to the superior courts. *Brady's Gloss. p. 48*. *Squire* seems to think the *folcmote* not distinct from the *shiremote*, or common general meeting of the county. *Angl. Sax. Gov. 155. n.*

Manwood mentions *folcmote* as a court holden in *London*, wherein all the *folk* and people of the city did complain of the mayor and aldermen, for misgovernment within the said city: and this word in *Stowe's* time continued in use among the *Londoners*; and denoted *celebrem ex tota civitate conventum*. *Stowe's Survey.*

According to *Kennet*, the *folcmote* was a common council of all the inhabitants of a city, town or borough, convened often by sound of bell to the *mote-hall* or *house*; or it was applied to a larger congress of all the freemen within a county, called the *shire-mote*, where formerly all knights and military tenants did fealty to the king, and elected the annual sheriff on the first of *October*; till this popular election, to avoid tumults and riots, devolved to the king's nomination. After which the *city folkmote* was swallowed up in a select committee or *common council*, and the *county folkmote*, in the *sheriff's tourn* and *assises*. The word *folcmote* was also used for any kind of popular or public meeting; as of all the tenants at the *court-leet* or *court-baron*, in which signification it was of a less extent. *Paroch. Antiq. 120*. See further, this *Dict. tit. Parliament.*

FOLDAGE AND FOLD COURSE, A liberty to fold sheep, &c. See *Faldage, Faldfec.*

FOLGARII, Menial servants; *Bract. lib. 3. tract 2. c. 10*. House-keepers by the *Saxons*, were called *husfastene*, and their servants or followers, *folgheres* or *folgeres*. *LL. Hen. I. c. 9*.

FOOL, A natural; one so from the time of his birth. See *tit. Idiots and Lunatics.*

FOOT OF A FINE. See *tit. Fine of Lands.*

FOOT-GELD. From *Sax. fot, pes*; and *geldan, solvere*. *Pedis redemptio.*] An amercement for not cutting out and *expeditating* the balls of great dogs' feet in the *forest*: to be quit of *foot-geld* is a privilege to keep dogs within the forest unawled, without punishment. *Manwood, par. 1. p. 86*. See *tit. Forest.*

FORAGE, Fr. *fourage.*] Hay and straw for horses, particularly for the use of horse in an army.

FORAGIUM, Straw when the corn is thrashed out. *Cowel.*

FORBALK, *forbalka.*] Lying forward or next the highway. *Petr. Blesensis Contin. Hist. Croyland, p. 116.*

FORBARRE, To bar or deprive one of a thing for ever. See stats. 9 *Rich. II. c. 2.* 6 *Hen. VI. c. 4.*

FORBATUDUS, The aggressor slain in combat.

FORBISHER OF ARMOUR, *forbator.*] *Si quis forbator arma alicujus suscepit, ad surgandum, &c. LL. Aluredi, MS. c. 22.*

FORCE, *vis.*] Is most commonly applied in *pejorem partem*, the evil part, and signifies any unlawful violence. It is defined by *West* to be an offence, by which violence is used to things or persons; and he divides it into *simple* and *compound*; *simple force*, is that which is so committed that it hath no other crime accompanying it; as if one by *force* do only enter into another man's possession, without doing any other unlawful act: mixed or *compound force*, is when some other violence is committed with such a fact, which of itself alone is criminal; as where any one by *force* enters into another man's house, and kills a man, or ravishes a woman, &c. And he makes several other divisions of this head. *West. Symbol. pa. 2. sect. 65.* Lord *Coke* says, there is also a *force implied* in law; as every trespass, rescous, or disseisin, implieth it; and an *actual force*, with weapons, number of persons, &c. where threatening is used to the terror of another. *Co. Litt. 257.* By law any person may enter a tavern; and a landlord may enter his tenant's house to view repairs, &c. But if he that enters a tavern, commits any *force* or violence: or he that enters to view repairs, breaketh the house, &c. it shall be intended that they entered for that purpose. 8 *Rep. 146.* All *force* is against the law; and it is lawful to repel *force* by *force*: there is a maxim in our law, *quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum est.* 3 *Rep. 78.* Where a crime in itself capital, is endeavoured to be committed by *force*, it is lawful to repel that *force* by the death of the party attempting. 4 *Comm. 181.* See tit. *Murder.*

FORCIBLE ENTRY AND DETAINER.

An offence against the public peace, which is committed by violently *taking* or *keeping* possession of lands and tenements, with menaces, arms and force, and without the authority of the law; whereby he who hath right of entry is barred or hindered. See 4 *Comm. 148.* At common law any one who had a right of entry into lands, &c. might regain possession thereof by *force*; but this liberty being much abused, to the breach of the public peace, it was found necessary that it should be restrained. By stat. 5 *Rich. II. st. 1. c. 8.* all forcible entries are punished with imprisonment and ransom at the king's will. And by stats. 15 *Rich. II. c. 2.* 8 *Hen. VI. c. 9.* 31 *Eliz. c. 11.* 21 *Jac. I. c. 15.* upon any forcible entry or forcible detainer after peaceable entry into any lands, (or benefices of the church,) one or more justices of the peace, taking sufficient power of the county, may go to the place, and there record the *force* upon his own view, as in case of riots; and upon such conviction may commit the offender to gaol till he makes fine and ransom to the king. And moreover the justice or justices have power to summon a jury to try the forcible entry or detainer complained of: and if the same be found by that jury, then besides

the fine on the offender, the justices shall make restitution, by the sheriff, of the possession, without inquiring into the merits of the title; for the *force* is the only thing to be tried, punished and remedied by them; and the same may be done by indictment at the general sessions. But this provision does not extend to such an endeavour to *maintain* possession by force, where they themselves or their ancestors have been in peaceable enjoyment of the lands, &c. for three years immediately preceding. 4 *Comm.* 148. And this may be alleged in stay of restitution, and restitution is to be stayed till that be tried, if the other will traverse the same, &c. *Dalt.* 312. See *T. Raym.* 85. 1 *Sid.* 149. *Salk.* 260.

Indictment for *forcible entry* must be laid of *liberum tenementum*, &c. to have restitution by stats. 15 *Rich.* II. c. 2. 8 *Hen.* VI. c. 9. &c. But by stat. 21 *Jac.* I. c. 15. justices of peace may give like restitution of possession to tenants for years, tenant by *elegit*, statute staple, &c. and copyholders, as to freeholders, since which statute the estate of the person ousted must be stated; for perhaps he is only tenant at will. *Semb.* 1 *Salk.* 260. *R.* 1 *Sid.* 102. See further, as to what shall be a good indictment, *Com. Dig.* title *Forcible Entry*, (D. 4.)

Having said thus much generally, we may proceed more particularly to inquire,

I. *What shall be deemed a Forcible Entry and Detainer under the foregoing Statutes.*

II. *What Remedy is provided in such Cases.*

I. By stat. 5 *Rich.* II. st. 1. c. 8. "None shall make any entry, into any lands or tenements, (or benefice of holy church, stat. 15 *Rich.* II. c. 2. or other possessions, stat. 8 *Hen.* VI. c. 9. § 2.) but where entry is given by the law; and in such case not with strong hand or with multitude of people, but only in peaceable and easy manner; on pain of imprisonment and ransom at the king's will.

When one or more persons armed with unusual weapons violently enter into the house or land of another; or where they do not enter violently, if they forcibly put another out of his possession; or if one enters another's house, without his consent, although the door be open, &c. these are all forcible entries punishable by law. *Co. Litt.* 257. So when a tenant keeps possession of the land at the end of his term against the landlord, it is a forcible detainer. And if a lessee takes a new lease of another person, whom he conceives to have better title, and at the end of the term keeps possession against his own landlord, this is a forcible detainer. *Cro. Jac.* 199. Also persons continuing in possession of a defeasible estate after the title is defeated, are punishable for forcible entry; for *continuing in possession afterwards, amounts in law to a new entry.* *Co. Litt.* 256, 257. And an infant or *feme covert* may be guilty of forcible entry within the statutes in respect of violence committed by them in person: but not for what is done by others at their command, their commands being void. *Co. Litt.* 257. 357.

If a man have two houses next adjoining, the one by a defeasible title, and the other by a good title; and he uses force in that he hath by the good title to keep persons out of the other house, this is a forcible detainer. 2 *Sheff. Abr.* 203. A man enters into

the house of another by the windows, and then threateneth the party, and he for fear doth leave the house, it is a forcible entry : so if one enter a house when no person is therein, with armed men, &c. *Moor, Cas.* 105. If a person after peaceable entry, shall make use of arms to defend his possession, &c. it will be forcible detainer : a man puts another out of his house by force, if he then puts in one of his servants in a peaceable manner, who keeps out the party, &c. it will be a forcible entry, but not a detainer ; but if himself remaineth there with force, this makes a *forcible detainer*. If I hear that persons will come to my house to beat me, &c. and I take in force to defend myself, it is no *forcible detainer* ; though where they are coming to take lawful possession only, it is otherwise. *2 Shep.* 203.

This offence may be committed of a rent, as well as of a house or land : as where one comes to distrain, and the tenant threatens to kill him, or *forcibly* makes resistance, &c. *2 Shep.* 201. But forcible entry cannot be of a *way*^o or other easement ; or of a common or office. *1 Hawk. P. C.* So no man can be guilty of *forcible entry*, for entering with violence into lands or houses in his own sole possession at the time of entry ; as by breaking open doors, &c. of his house detained from him by one who has the bare custody of it ; but joint-tenants, or tenants in common, may be guilty of *forcible entry*, and holding out their companions. A person is not guilty of a *forcible detainer*, by barely refusing to go out of a house, and continuing therein in despite of another. And no words alone can make a *forcible entry*, although violent and threatening, without force used by the party. *1 Lill. Abr.* 514.

A forcible entry may be committed by a single person as well as by twenty, and all who accompany a man when he makes a forcible entry, shall be adjudged to enter with him, whether they actually come upon the lands or not. *1 Hawk. P. C. c.* 64.

The same circumstances of violence or terror which will make an entry forcible will make a detainer forcible also. And a detainer may be forcible whether the entry were forcible or not. *1 Hawk. P. C. c.* 64.

If a justice of peace come to view a force in a house, and they refuse to let him in ; this of itself will make a *forcible detainer* in all cases ; but it must be upon complaint made. *Dalt.* 312.

II. The remedy may be by action ; or by justices of peace upon view ; or by indictment or inquisition.

By stat. 8 *Hen. VI. c.* 9. § 6. " If any person be put out or disseised of any lands or tenements in forcible manner, or put out forcibly, 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 in an action on this statute if the defendant make title which is found for him, he shall be dismissed without any inquiry concerning the force ; however punishable he may be for that at the king's suit. *1 Hawk. P. C. Dalt. c.* 129.

If in trespass or assise upon this statute the defendant is condemned by *non sum informatus* ; he shall pay treble damages and

treble costs; adjudged, and affirmed in error. For the words of the statute give them where the recovery is by verdict, or otherwise in due manner. *Jenk. Cent.* 197.

The party grieved if he will lose the benefit of his treble damages and costs may be aided and have the assistance of the justices at the general sessions by way of indictment on this same statute. Which being found there, he shall be restored to his possession by a writ of restitution granted out of the same court to the sheriff. *Dalt. c.* 129.

Indictment of forcible entry lies not only for lands, but for tithes; also for rents: but not against a lord entering a common with force, for which the commoner may not indict him, because it is his own land. *Cro. Car.* 201. 486.

For a more speedy remedy the party grieved may complain to any one justice, or to a mayor, sheriff or bailiff, within their liberties; and it is provided by stats. 15 *Rich.* II. c. 2. 8 *Hen.* VI. c. 9. that after complaint made to such justice, &c. he shall, within a convenient time, at the costs of the party grieved, take sufficient power of the county, and go to the place where such force was made, and if he shall find such force, shall cause the offenders to be arrested, and make a record of such force by him viewed; and the offenders so arrested shall be put in the next gaol, there to abide convict by the record of the same justice until they have made fine and ransom to the king.

As to restitution to the party injured, it is enacted by the said stat. 8 *Hen.* VI. c. 9. that though the persons making such entry be present, or else departed before the coming of the justice, he may, notwithstanding, in some town next to the tenements so entered, or in some other convenient place, have power to inquire by a jury of the county as to the persons making such forcible entry and detainer; and the justice may make his precept to the sheriff, who is to summon the jury. And if such forcible entry or detainer be found before such justice, then the said justice shall cause to reseise the lands and tenements so entered or holden, and shall restore the party put out to the full possession of the same. And by the stat. 31 *Eliz.* c. 11. if on an indictment of forcible entry, &c. it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess.

Under the above stat. 15 *Rich.* II. c. 2. any justice of the peace upon view of the force, may make a record of it, and commit the offender. And this, without a writ directed to him to execute the statutes: and upon any information without a complaint of the party. So every justice may take the sheriff, and *posse comitatus*, to restrain: or he may break open a house to remove the force. *Dalt. c.* 44. The record made by a justice upon view, shall be a conviction, and is not traversable: and ought to be certified to *B. R.* or the next assises, or quarter sessions. And if a defect appears, in the conviction, to *B. R.* it shall be quashed. 1 *Sid.* 156. See 8 *Co.* 121. The justices have power to fine on view; but are not bound to do it on the spot, but may take a reasonable time to consider. See *Str.* 794. *Ld. Raym.* 1515.

The justices, on forcible detainer, may punish the force upon view, and fine and imprison the offenders. *Sid.* 156. And it hath been held, that in forcible entry and detainer, the jury are to find *all* or *none*; and not the detainer, without the forcible entry. 1 *Vent.* 25.

An indictment will lie at common law for a forcible entry, though generally brought on the above statutes. But it must show on the face of it sufficient actual force. 3 *Burr.* 1702. 1732. 8 *Term Refl. K. B.* 357.

An indictment for a forcible detainer, ought to show, that the entry was peaceable. *Cro. Jac.* 151.

Indictments for forcible entry must set forth, that the entry was *manu forti*, to distinguish this offence from other trespasses *vi et armis*; and there are many niceties to be observed in drawing the indictment, otherwise it will be quashed. *Cro. Jac.* 461. *Dalt.* 298. There must be certainty in this indictment; and no repugnancy, which is an incurable fault. An indictment of forcible entry was quashed, for that it did not set forth the estate of the party: so where the defendant hath not been in possession peaceably three years before the indictment, without saying before the indictment found, &c. And force shall not be intended when the judgment is generally laid, for it must be always expressed. 2 *Nels. Abr.* 867. 869.

The justice may make restitution (after inquisition found) to the party ousted, by himself, or by his precept to the sheriff. *T. Raym.* 85. *Carth.* 496. So restitution shall be made upon an indictment at the quarter sessions. *H. P. C.* 140.

An indictment of forcible entry may be removed from before justices of peace into the court of *B. R. coram rege*, which court may award restitution. 11 *Repl.* 65. See *Ann.* 174. *Latch.* 172. 4 *Inst.* 176. And the justices before whom such indictment was found, may, after traverse tendered, certify or deliver the indictment into the *King's Bench*, and refer the proceeding thereupon to the justices of that court.

So justices of gaol delivery, upon an indictment before them. So re-restitution shall be, after an ill restitution awarded. *Sav.* 68. *Cro. Jac.* 151. So restitution shall be to a disseisor ousted by the force of the disseisee. To a lessee, though the lessor, who was disseised thereby, opposes it. To a copyholder, though his lord opposes it. Vide *Dalt. c.* 132. *Contrà before stat.* 21 *Jac. c.* 15. See *Dyer*, 142. *a. in marg.*

A copyholder cannot be disseised, because he hath no freehold in his estate; but he may be expelled. And a copyhold tenant may be restored, where he is wrongfully expelled; but if the indictment be only of disseisin, as he may not be disseised, there can be no restitution but at the prayer of him who hath the freehold. *Yelv.* 81. *Cro. Jac.* 41. Possession of the termor is the possession of him in reversion; and when a lessee for years is put out of possession by force, restitution must be to him in reversion, and not to the lessee; and then his lessee may re-enter. 1 *Leon.* 327. A termor may say that he was expelled, and his landlord in reversion disseised; or rather that the tenant of the freehold is disseised, and he, the lessee for years, expelled. 4 *Mod.* 248. 2 *Nels. Abr.* 869. If a disseisee within three years makes a lawful claim, this is an interruption of the possession of the disseisor. *H. P. C.* 139. Though it hath been adjudged, that it is not the title of the possessor, but the possession for three years, which is material. *Sid.* 149. Since the stat. 5 *Rich. II. st.* 1. c. 8. if one be seised of lands, and another having good right to enter, doth accordingly enter

manu forti, he may be indicted notwithstanding his right, &c. 3 *Salk.* 170. For a *forcible* detainer only it is said there is no restitution; the plaintiff never having been in possession. 1 *Vent.* 23. *Sid.* 97. 99.

No restitution shall be awarded to an *advowson*, *common*, *rent*, &c. for it shall only be to *land*. *Dalt.* c. 44. Nor where he, who used force, has the possession by *operation of law*: as if a disseisee enters, and afterwards, by force, ousts his disseisor, the possession shall not be restored; for it was vested in the disseisee by his entry. *Dalt.* c. 132. Nor, if a lessor enters by force, upon the lessee, for a forfeiture; nor to any other than him who was ousted by force, or to his heir. *Salk.* 587. Or any abator, after the death of the ancestor. *Dalt.* c. 132. Nor if the party tenders a traverse to the inquisition. 1 *Sid.* 287. Upon a *certiorari* delivered to remove an indictment, it shall be stayed. *H. P. C.* 141. Or if the indictment appears insufficient. *H. P. C.* 140. And in such case *restitution* granted may be stayed before execution. *H. P. C.* 140. So *restitution* shall not be, after a conviction by a justice upon his view. 1 *Vent.* 308. Nor by justices of assise, gaol delivery, or justices of peace; if the indictment was not found before them. *H. P. C.* 140. *Dalt.* c. 44. 131. So *restitution* shall not be, unless immediately; not four or five years afterwards. *Carth.* 496.

A record of justices of peace of *forcible entry*, is not traversable; but the entry and force, &c. may be traversed in writing, and the justices may summon a jury for trial of the traverse. 1 *Salk.* 353. The finding of the force being in nature of a presentment by the jury, is traversable; and if the justices of peace refuse the traverse, and grant restitution, on removing the indictment into *B. R.* there the traverse may be tried; and on a verdict found for the party, &c. a *re-restitution* shall be granted. *Sid.* 287. 2 *Salk.* 588. If no force is found at a trial thereof before justices, *restitution* is not to be granted; nor shall it be had till the force is tried; nor ought the justices to make it in the absence of the defendant, without calling him to answer. 1 *Hawk. P. C.* c. 64.

No other justices of peace but those before whom the indictment was found, may, either at sessions, or out of it, award restitution; the same justices may do it in person, or make a precept to the sheriff to do it, who may raise the power of the county to assist him in executing the same. 1 *Hawk. P. C.* c. 64. And the same justices of peace may also supersede the restitution, before it is executed; on insufficiency found in the indictment, &c. But no other justices, except of the court of *B. R.* A *certiorari* from *B. R.* is a *supersedeas* to the restitution; and the justices of *B. R.* may set aside the restitution after executed, if it be against law, or irregularly obtained, &c. 1 *Salk.* 154. If justices of peace exceed their authority, an information may be brought against them. A conviction for *forcible entry*, before a fine is set, may be quashed on motion; but after a fine is set, it may not; the defendant must bring writ of error. 2 *Salk.* 450.

If a plaintiff proceeds not criminally by indictment for *forcible entry*, but commences a civil action on the case, on stat. 8 *Hen.* VI. c. 9. the defendant is to plead *not guilty*; or may plead any special matter, and traverse the force; and the plaintiff in his replication must answer the special matter, and not the traverse;

and if it be found against the defendant, he is convicted of the force of course; whereupon the plaintiff shall recover treble damages and costs. 3 *Salk.* 169.

A reversioner cannot bring action of *forcible entry*, because he cannot be expelled, though he may be disseised. *Dyer*; 141. The words in the writ to maintain the action are, that the defendant *compulit et disseisivit, &c.* yet it is said that every disseisin implies an expulsion in *forcible entry*. *Cro. Jac.* 31.

Though *forcible entry* is punishable either by indictment or action, the action is seldom brought, but the indictment often. But in many cases it may be much more for the benefit of the party to bring the action.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. *Dalt. c.* 44.

See further on this subject. 1 *Hawk. P. C. c.* 64. at length; and *Burn's Justice*, tit. *Forcible Entry*.

FORCIBLE MARRIAGE, See this *Dict.* tit. *Marriage, Guardian*.

FORD, *forda*.] A shallow place in a river. *Mon. Ang. tom.* 1. *ft.* 657. See tit. *Ferry*.

FORDOL, from Sax. *fore*, before, and *dalc*, a part or portion.] A butt or head-land, shooting upon other bounds.

FORECHEAPUM, from Sax. *fore*, ante, and *ceapean*, i. e. *nundinari emere*.] Præemption. *Chron. Brompton*, col. 897, 898. LL. *Æthelredi*, c. 23.

FORECLOSED, Shut out or excluded; as the barring the equity of redemption on mortgages, &c. See tit. *Mortgage*.

FOREGOERS, The king's purveyors; they were so called from their going before to provide for his household. 36 *Edw.* III. 5.

FOREIGN, Fr. *forain*. Lat. *forinsecus, extraneus*.] Strange or outlandish, of another country, or society; and in our law, is used adjectively, being joined with divers substantives in several senses. *Kitch.* 126.

FOREIGN ATTACHMENT, See tit. *Attachment, foreign*.

FOREIGN COURT, At *Lemster* (anciently called *Leominster*), there is the borough and the *foreign court*; which last is within the jurisdiction of the manor, but not within the liberty of the bailiff of the borough; so there is a *foreign court* of the honour of *Gloucester*. *Clau.* 8 *Edw.* II. *Foreign bought and sold* was custom within the city of *London*, which being found prejudicial to the sellers of cattle in *Smithfield*, was abolished.

FOREIGN KINGDOM, FOREIGN LAWS AND CUSTOMS. A foreign kingdom is one under the dominion of a *foreign prince*; so that *Ireland*, or any other place, subject to the crown of *England*, cannot with us be called *foreign*; though to some purposes they are distinct from the realm of *England*. If two of the king's subjects fight in a *foreign kingdom*, and one of them is killed, it cannot be tried here by the common law: but it may be tried and determined in the court of the *constable and marshal*, according to the *civil law*; or the fact may be examined by the *privy council*, and tried by commissioners appointed by the king in any county of *England*, by

stat. 33 Hen. VIII. c. 23. 3 Inst. 48. One *Hutchinson* killed Mr. *Colson* abroad in *Portugal*, for which he was tried there and acquitted, the exemplification of which acquittal he produced under the great seal of that kingdom; and the king being willing he should be tried here, referred it to the judges, who all agreed, that the party being already acquitted by the laws of *Portugal*, could not be tried again for the same fact here. 3 Keb. 785.

If a stranger of *Holland*, or any foreign kingdom, buys goods at *London*, and gives a note under his hand for payment, and then goes away privately into *Holland*; the seller may have a certificate from the lord mayor, on proof of sale and delivery of the goods: upon which the people of *Holland* will execute a legal process on the party. 4 Inst. 38. Also at the instance of an ambassador or consul, such a person of *England*, or any criminal against the laws here, may be sent from a foreign kingdom hither. Where a bond is given, or contract made in a foreign kingdom, it may be tried in the king's bench, and laid to be done in any place in *England*. Hob. 11. 2 Bulst. 322.

An agreement made in *France*, on two *French* persons marrying, touching the wife's fortune, has been decreed here to be executed, according to the laws of *England*; and that the husband surviving should have the whole; but relief was first given for a certain sum, and the rest to be governed by the custom of *Paris*. Preced. Chanc. 207, 208.

A. and *B.* being inhabitants of the *United States* of *America*, while those states were colonies of *Great Britain*, and before the rebellion of them as colonies, *B.* executes a bond to *A.* During the rebellion, after the declaration of independence by the *American* congress, but before the independence of *America* was acknowledged by *Great Britain*, both parties are attainted; their property confiscated, and vested in the respective states of which they were inhabitants, by the legislative acts of those states then in rebellion, and a fund provided for the payment of the debts of *B.* Afterwards the independence of *America* is acknowledged by *Great Britain*. Under all these circumstances *A.* may maintain an action on the bond against *B.* in *England*. Parl. Cases, 8vo. Judgment of the court of king's bench (affirming the judgment of *C. P.*) affirmed.

Though all these judgments appear unanimous, the two former, and perhaps all three of them, were given in some measure upon different grounds. But it appears upon the two first decisions to be a principle not judicially controverted, that "the penal laws of one country cannot be taken notice of, to affect the laws and rights of citizens (or subjects of such country, becoming citizens) of another; the penal laws of foreign countries being strictly local, and affecting nothing more than they can reach, and can be seized by virtue of their authority." See 3 Term Rep. 733. 735. 1 H. Black. Rep. 135.

In the case of *Dudley v. Folliott*, the court having no doubt about the law, and thinking that it would lead to the discussion of improper topics, would not permit the question to be argued. That was the case of a covenant in a conveyance of lands in *America*, made during the time of the rebellion, (April, 1780,) "that the grantor had a legal title, and that the grantee might peace-

ably enjoy, &c. without the least interruption, &c. of the grantor and his heirs, or of any other person whomsoever." The court were of opinion that this covenant was not broken by the states of *America* seising the lands, as forfeited, for an act done previous to the conveyance, notwithstanding the subsequent acknowledgment of independence. 3 *Term Rep.* 584.

A foreigner may gain a settlement, in *England* by occupying a tenement of 10*l.* a year, for forty days. 4 *East's Rep.* 103.

A natural born subject of *Great Britain*, may be also a citizen of a foreign country, for the purposes of commerce, and entitled to all advantages as such under a treaty with that country—and the circumstance of his coming over to *Great Britain* for a temporary purpose, does not deprive him of those advantages. 8 *Term Rep. K. B.* 31. Affirmed in the exchequer-chamber. 1 *Bos. & Pull.* 430.

As to the effects of judgments in foreign courts, upon the property of *British* subjects within their jurisdiction, and how far such judgments shall be allowed to interfere with the laws of this country, see *H. Black.* 409. &c.

FOREIGN OPPOSER, or *opposer*, see *Exchequer*.

FOREIGN PLANTATIONS; AND DOMINIONS OF THE CROWN. As to the former of these, see this *Dict.* tit. *Plantations*. As to any foreign dominions which may belong to the person of the king by hereditary descent, by purchase or other acquisition, as the territory of *Hanover* and his majesty's other property in *Germany*; as these do not in any wise appertain to the crown of these kingdoms, they are entirely unconnected with the laws of *England*, and do not communicate with this nation in any respect whatsoever. The *English* legislature, warned by past experience, wisely inserted in the act of settlement, which vested the crown in the present family, the following clause. "That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of *England*, this nation shall not be obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of *England*, without consent of parliament." Stat. 12 & 13 *Wm. III. c.* 3.

FOREIGN PLEA. A plea in objection to a judge, where he is refused as incompetent to try the matter in question, because it arises out of his jurisdiction. *Kitch.* 75. Stat. 4 *Hen. VIII. c.* 2. If a plea of issuable matter is alleged in a different county from that wherein the party is indicted or appealed, by the common law, such pleas can only be tried by juries returned from the counties wherein they are alleged. But by the stat. 23 *Hen. VIII. c.* 14. § 5. all *foreign pleas* triable by the country, upon an indictment for petit treason, murder or felony, shall be forthwith tried without delay, before the same justices before whom the party shall be arraigned, and by the jurors of the same county where he is arraigned, notwithstanding the matter of the pleas is alleged to be in any other county or counties: though as this statute extends not to treason, nor appeals, it is said a *foreign* issue therein must still be tried by the jury of the county wherein alleged. 3 *Inst.* 17. *Hawk. P. C.* 255. 2 *Hawk. P. C. c.* 40. § 6, 7. In a *foreign plea* in a civil action, the defendant ought to plead to that place where the plaintiff alleges the matter to be done in his declaration; and the defendant may plead a *foreign plea* whether the matter is transitory,

or not transitory; but in the last case he must swear to it. *Sid.* 234. 2 *Nels.* 871. When a *foreign plea* is pleaded, the court generally makes the defendant put it upon oath, that it is true; or will enter up judgment for want of a plea. See 5 *Mod.* 335. *Foreign answer* is such an answer as is not triable in the county where made; and *foreign matter* is that matter which is done in another county, &c. See further, tit. *Pleading, Indictment.*

FOREIGN SERVICE, Is that whereby a mesne lord holds of another, without the compass of his own fee: or that which the tenant performs either to his own lord, or to the lord paramount out of the fee. *Kitch.* 299. See *Bract. lib. 2. c. 16.* *Foreign service* seems also to be used for *knight's service*, or *escuage* uncertain. *Perkins,* 650. *Salvo forinseco servitio. Mon. Ang. tom. 2. p. 637.*

Felonies in serving foreign states, are restrained and punished by stat. 3 *Jac. I. c. 4.* which makes it felony for any person whatever to go out of the realm, to serve any foreign prince or state, without having first taken the oath of allegiance before his departure. And it is felony also for any gentleman, or person of higher degree, or who hath borne office in the army, to go out of the realm to serve such foreign prince or state, without previously entering into a bond with two sureties, not to be reconciled to the see of *Rome*, or enter into any conspiracy against his natural sovereign. See the stat. § 18, 19. By stat. 9 *Geo. II. c. 30.* enforced by stat. 29 *Geo. II. c. 17.* if any subject of *Great Britain* shall enlist himself, or if any person shall procure him to be enlisted in any foreign service, or detain or embark him for that purpose without license under the king's sign manual, he shall be guilty of felony without benefit of clergy; but if the person so seduced, shall within 15 days discover his seducer, he shall on conviction of the seducer be indemnified. By stat. 29 *Geo. II. c. 17.* it is enacted, that to serve under the *French King*, as a military officer, shall be felony without benefit of clergy: and to enter into the *Scotch* brigade in the *Dutch* service, without previously taking the oaths of allegiance and abjuration, shall incur a forfeiture of 500*l.* See further, this *Dict.* tit. *Allegiance, Contempt, Treason.*

FOREIGNERS, See tit. *Alien.*

FOREJUDGER, *forisjudicatio.*] A judgment whereby a person is deprived of, or put by, the thing in question. *Bract. lib. 4.* To be *forejudged* the court, is when an officer or attorney of any court is expelled the same for some offence, or for not appearing to an action, on a bill filed against him. See tit. *Attorneys at Law.*

Form of a Forejudger of an Attorney.

BE it remembered, that on the day of, &c. this same term, A. B. came here into this court, by, &c. his attorney, and exhibited to the justices of our sovereign lord the king, his bill against C. D. gent. one of the attorneys of the common bench of our said sovereign lord the king, personally present here in court; the tenor of which bill follows in these words, that is to say, To the justices of our sovereign lord the king, ss. A. B. by, &c. his attorney, complains of C. D. one of the attorneys, &c. for that whereas, &c. (setting forth the whole bill.) The pledges for the prosecution are, John Doe and Richard Roe; whereupon the said C. D. being solemnly called, came

not; therefore he is forejudged from exercising his office of attorney of this court, for his contumacy, &c.

FORESCHOKE, *develictum*.] Forsaken; in one of our statutes, it is specially used for lands or tenements seized by a lord, for want of services performed by the tenant, and quietly held by such lord *beyond a year and a day*; now the tenant, who seeth his land taken into the hands of the lord, and possessed so long, and doth not pursue the course appointed by law to recover it, doth in presumption of law disavow or forsake all the right he hath to the same; and then such lands shall be called *foreschoke*. See stat. 10 *Edw. II. c. 1.*

FOREST.

FORESTA, SALTUS.] A great or vast wood; *locus sylvestris et saltuosus*. Our law writers define it thus; *foresta est locus ubi fera inhabitant vel includuntur*; others say it is called *foresta, quasi ferarum statio, vel tuta mansio ferarum*. Manwood, in his *Forest Laws*, gives this particular definition of it: A forest is a certain territory or circuit of woody grounds and pastures, known in its bounds and privilege, *for the peaceable being and abiding of wild beasts, and fowls of forest, chase and warren, to be under the king's protection for his princely delight*: replenished with beasts of venery or chase, and great coverts of vert for succour of the said beasts; for preservation whereof there are particular laws, privileges and officers belonging thereunto. *Manw. par. 2. c. 1.*

Forests are of that antiquity in *England*, that (except the *New Forest*, in *Hampshire*, erected by *William* called *The Conqueror*, and *Hampton Court*, erected by *King Hen. VIII.* (see stat. 31 *Hen. VIII. c. 5.*) it is said there is no record or history doth make any certain mention of their erections and beginnings; though they are mentioned by several writers, and in divers of our laws and statutes. 4 *Inst.* 319. Our ancient historians tell us, that *New Forest* was raised by the destruction of twenty-two parish churches, and many villages, chapels and manors, for the space of thirty miles together, which was attended with divers judgments, as they are termed, on the posterity of *King William I.* who erected it; for *William Rufus* was there shot with an arrow, and before him *Richard*, the brother of *Henry I.* was there killed; and *Henry*, nephew to *Robert*, the eldest son of the *Conqueror*, did hang by the hair of the head in the boughs of the forest, like unto *Absalom*. *Blount.*

Besides the *New Forest*, there are sixty-eight other forests in *England*; thirteen chases, and more than seven hundred parks; the four principal forests are, *New Forest* on the sea, *Shirewood Forest* on the *Trent*, *Dean Forest* on the *Severn*, reafforested by stat. 20 *Car. II. c. 3.* and *Windsor Forest* on the *Thames*. The way of making a forest is thus: certain commissioners are appointed under the great seal of *England*, who view the ground intended for a forest, and fence it round with metes and bounds; which being returned into the chancery, the king causes it to be proclaimed throughout the county where the land lieth, that it is a forest,

and to be governed by the laws of the *forest*, and prohibits all persons from hunting there without his leave, and then he appointeth officers fit for the preservation of the vert and venison, and so it becomes a *forest* on record. *Manw. c. 2.* Though the king may erect a *forest* on his own ground and wastes, he may not do it in the ground of other persons, *without their consent*; and agreements with them for that purpose ought to be confirmed by parliament. *4 Inst. 300.*

Proof of a *forest* appears by matter of record; as by the *eyres* of the justices of the *forests*, and other courts, and officers of *forests*, &c. and not by the name in grants. *12 Rep. 22.* As parks are enclosed with wall, pale, &c. so *forests* and chases are enclosed by *metes and bounds*; such as rivers, highways, hills, which are an enclosure in law, and without which there cannot be a *forest*: and in the eye of the law, *the boundaries of a forest go round about it as it were a brick wall, directly in a right line the one from the other, and they are known either by matter of record, or prescription.* *4 Inst. 317.* Bounds of a *forest* may be ascertained by commission from the lord chancellor; and commissioners, sheriffs, officers of *forests*, &c. are empowered to make inquests thereof. *Stat. 16 & 17 Car. I. c. 16.* Also the boundaries of *forests* are reckoned a part of the *forest*; for if any person kill or hunt any of the king's deer in any highway, river, or other inclusive boundary of a *forest*, he is as great an offender as if he had killed or hunted deer within the *forest* itself. *4 Inst. 318.*

By the grant of a *forest*, the game of the *forest* do pass; and beasts of the *forest* are the hart, hind, buck, doe, boar, wolf, fox, hare, &c. The seasons for hunting whereof are as follow, *viz.* that of the hart and buck begins at the feast of *St. John Baptist*, and ends at *Holy-wood day*; of the hind and doe, begins at *Holy-wood*, and continues till *Candlemas*; of the boar, from *Christmas* to *Candlemas*; of the fox, begins at *Christmas*, and continues till *Lady-day*; of the hare, at *Michaelmas*, and lasts till *Candlemas.* *Dyer, 169. 4 Inst. 316.*

Not only game, &c. are incident to a *forest*, but also a *forest* hath divers special properties. 1. A *forest*, truly and strictly taken, cannot be in the hands of any but the king; for none but the king hath power to grant commission to any one to be a *justice in eyre of the forest*; but if the king grants a *forest* to a subject, and granteth further that upon request made in chancery, he and his heirs shall have justices of the *forest*, then the subject hath a *forest* in law. *4 Inst. 314. Cro. Jac. 155.*

The second property of a *forest* is the courts; as the *justice-seat*, the *swainmote*, and court of attachment. The third property is the officers belonging to it; as first, the *justices of the forest*, the *warden* or *warder*, the *verderors*, *foresters*, *agisters*, *regarders*, *keepers*, *bailiffs*, *beadles*, &c. See tit. *Attachment of the Forest.*

As to the courts. The most especial court of a *forest* is the *swainmote*, which is no less incident to it than a court of *piepowder* to a fair; and, if this fail, there is nothing remaining of the *forest*, but it is turned into the nature of a *chase.* *Manw. c. 21. Crompt. Jur. 146.*

The court of attachment or woodmote in *forests*, is kept every

forty days, at which the *foresters* bring in the attachment *de vtridi et venatione*, and the presentments thereof, and the verderors do receive the same, and enrol them; but this court can only inquire, not convict. The court of *swainmote* is holden before the verderors as judges, by the steward of the swainmote, thrice in the year; the swains or freeholders within the *forest* are to appear at this court, to make inquests and juries; and this court may inquire *de superoneratione forestariorum et aliorum ministrorum forestæ, et de eorum oppressionibus populo nostro illatis*: and also may receive and try presentments certified from the court of attachments against offences in vert or venison. And this court may inquire of offences, and convict also, but not give judgment, which must be at the justice-seat. *4 Inst.* 289.

The *court of regard*, or survey of dogs, is holden likewise every third year, for expeditation, or lawing of dogs, by cutting off to the skin three claws of the fore feet, to prevent their running at or killing of deer. No other dogs but mastiffs are to be thus lawed or expeditated, for none other were permitted to be kept within the precincts of the forest, it being supposed that the keeping of these, and these only, was necessary for the defence of a man's house. *4 Inst.* 308.

The principal court of the forest is the court of the *chief justice in eyre*, or *justice-seat*, which is a court of record, and hath authority to hear and determine all trespasses, pleas, and causes of the forest, &c. within the forest, as well concerning vert and venison, as other causes whatsoever; and this court cannot be kept oftener than *every third year*. As before other justices in *eyre*, it must be summoned forty days at least before the sitting thereof; and one writ of summons is to be directed to the sheriff of the county, and another writ *custodi forestæ, domini regis velejus locum tenenti, &c.* Which writ of summons consists of two parts: *First*, to summon all the officers of the forest, and that they bring with them all records, &c. *Secondly*, All persons who claim any liberties or franchises within the forest, and to show how they claim the same. It may also proceed to try presentments in the inferior courts of the forest, and to give judgment upon conviction of the swainmote. And the chief justice may therefore after presentment made, or indictment found, but not before, issue his warrant to the officers of the forest to apprehend the offenders. *Stats. 1 Edw. III. c. 8. 7 Rich. II. c. 4.* This court, being a court of record, may fine and imprison for offences within the forest, and therefore if there be erroneous judgment at the justice-seat, the record may be removed by writ of error into *B. R.* or the chief justice in *eyre* may adjourn any matter to that court. *4 Inst.* 291. 295. 313.

These justices in *eyre* were instituted by *Hen. II. A. D. 1184*; and their courts were formerly held very regularly; but the last court of justice-seat of any note was that holden in the reign of *Charles I.* before the Earl of *Holland*; the rigorous proceedings at which are reported by *Sir W. Jones*. After the restoration another was held, *pro formâ* only, before the Earl of *Oxford*; but since the æra of the revolution in 1688, the forest laws have fallen into total disuse, to the great advantage of the subject. See *3 Comm.* 73. Much therefore of what follows is matter rather of curiosity than use.

There is but one *chief justice* of the *forests* on this side *Trent*, and he is named *justiciarius itinerans forestarum, &c. citra Trentam*; and there is another, *capitalis justiciarius*; and he is *justiciarius itinerans omnium forestarum ultra Trentiam, &c.* who is a person of greater dignity than knowledge in the laws of the *forest*; and therefore, when *justice-seats* are held, there are associated to him such as the king shall appoint, who, together with him, determine *omnia placita foresta, &c.* 4 *Inst.* 315. By stat. 32 *Hen. VIII. c. 35.* justices of the king's forests may make deputies.

A *justice in eyre* cannot grant license to sell any timber, unless it be *sedente curiâ*, or after a writ of *ad quod damnum*; and it hath been resolved by all the judges, that though *justices in eyre*, and the king's officers within his *forests*, have charge of venison, and of vert or green-hue, for the maintenance of the king's game, and all manner of trees for covert, browse and pannage; yet when timber of the *forest* is sold, it must be cut and taken by power under the *great seal*, or the *exchequer seal*, by view of the *foresters*, that it may not be had in places inconvenient for the game: and the justice in *eyre*, or any of the king's officers in the *forest*, cannot sell or dispose of any wood within the *forest* without commission; so that the *exchequer* and the officers of the *forest* have *divisum imperium*, the one for the profit of the king, the other for his pleasure. Also no officer of the *forest* can claim windfalls, or dotard trees, for their perquisites, because they were once parcel of the king's inheritance; but they ought to be sold by commission, for the king's best benefit. Read on *Statutes*, vol. 3. p. 304, 305.

If any officers cut down wood, not necessary for browse, &c. they forfeit their offices. 9 *Rep.* 50. The lord of a *forest* may by his officers enter into any man's wood within the regard of the *forest*, and cut down browse wood for the deer in winter. A prescription for a person to take and cut down timber-trees in a *forest*, without view of the *forester*, it is said may be good; but, of this, *quære*, without allowance of a former *eyre, &c.* If a man hath wood in a *forest*, and hath no such prescription, the law will allow him to fell it, so as he does not prejudice the game, but leave sufficient vert; but it ought to be by writ of *ad quod damnum, &c.* 4 *Inst. Cro. Jac.* 155. And every person in his own wood in a *forest* may take *house-bote* and *hay-bote* by view of the *forester*; and so may freeholders by prescription, copyholders by custom, &c. 1 *Edw. III. st. 2. c. 2.* The wood taken by view of the *forester*, ought to be presented at the next *court of attachment*, that it was by view, and may appear of record.

Fences, &c. in *forests* and chases, must be with low hedges, and they may be destroyed, though of forty years continuance, if they were not before. *Cro. Jac.* 156. He whose wood is in danger of being spoiled, for want of repairing fences by another; ought to request the party to make good the hedges; and if he refuse, then he must do it himself, and have action on the case against the other that should have done it. 1 *Jones*, 277.

A person may have action at common law for a trespass in a *forest*, as to wood, &c. to recover his right. *Sid.* 296.

The *chief warden* of the *forest* is a great officer, next to the justices of the *forest*, to bail and discharge offenders; but he is no judicial officer, and the constable of the castle where a *forest* is, by

the *forest law*, is chief warden of the *forest*, as of *Windsor Castle, &c.*

A *verderor* is a judicial officer of the *forest*, and chosen in full county, by the king's writ: his office is to observe and keep the assises or laws of the *forests*, and view, receive and enrol, the attachments and presentments of all trespasses of the *forest*, of vert and venison, and to do equal right and justice to the people: the *verderors* are the chief judges of the *swainmote* court; although the chief warden, or his deputy, usually sits there. 4 *Inst.* 292.

The *regarder* is to make regard of the *forest*, and to view and inquire of offences, concealments, defaults of *foresters*, &c. Before any justice-seat is holden, the *regarders* of the *forest* must make their regard, and go through and view the whole *forest*, &c. They are ministerial officers, constituted by letters patent of the king, or chosen by writ to the sheriff. 4 *Inst.* 291.

A *forester* is, in legal understanding, a sworn officer ministerial of the *forest*, and is to watch over the vert and venison, and to make attachments and true presentments of all manner of trespasses done within the *forest*; a *forester* is also taken for a *woodward*: this officer is made by letters patent, and it is said the office may be granted in fee, or for life. 4 *Inst.* 293. Every *forester*, when he is called at a court of justice-seat, ought upon his knees to deliver his horn to the chief justice in *eyre*; so every *woodward* ought to present his hatchet to my lord.

A *riding forester* is to lead the king in his hunting. 1 *Jones*, 277. The office of *forester, &c.* though it be a fee-simple, cannot be granted or assigned over without the king's license. 4 *Inst.* 316. If a *forester* by patent for life, is made justice of the same *forest pro hac vice*, the *forestership* is become void; for these offices are incompatible, as the *forester* is under the correction of the justice, and he cannot judge himself. 1 *Inst.* 313.

An *agister's* office is to attend upon the king's woods and lands in a *forest*, receive and take in cattle, &c. by agistment, that is, to depasture within the *forest*, or to feed upon the pannage, &c. And this officer is constituted by letters patent. 4 *Inst.* 293. Persons inhabiting in the *forest* may have common of herbage for beasts commonable within the *forest*; but by the *forest law*, sheep are not commonable there, because they bite so close that they destroy the vert; and yet it has been held, that *sheep* may be commonable in *forests* by prescription. 3 *Bulst.* 213.

There may be a prescription for common in a *forest* at all times of the year; though it was formerly the opinion of our judges, that the *fence-month* should be excepted. 3 *Lev.* 127. A *forest* may be *disafforested* and laid open; but right of common shall remain. *Poph.* 93. He that hath a grant of the herbage or pannage of a park, or *forest*, cannot take any herbage or pannage, but of the surplusage over and above a competent and sufficient pasture and feeding for the game; and if there be no surplusage, he that hath the herbage and pannage cannot put in any beasts; if he doth, they may be driven out. *Read on Statutes*, vol. 3. 305. None may gather nuts in the *forest* without warrant.

A *ranger* of a *forest* is one whose business is to rechase the wild beasts from the *furlicus* into the *forest*, and to present offen-

ces within the purlieu, and the forest, &c. And though he is not properly an officer in the forest, yet he is a considerable officer of, and belonging to it.

The *beadle* is a forest officer, that warns all the courts of the forest, and executes process, makes all proclamations, &c. *4 Inst.* 314.

There are also *keepers* or *bailiffs* of walks in forests and chases, who are subordinate to the verderors, &c. and these officers cannot be sworn on any inquests, or juries out of the forest. If any man hunts beasts within a forest, although they are not beasts of the forest, he is punishable by the forest laws; because all hunting there, without warrant, is unlawful. *4 Inst.* 314.

If a deer be hunted in a forest, and afterwards by hunting it is driven out of the forest, and the *forester* follows the chase, and the owner of the ground where driven kills the deer there; yet the *forester* may enter into the lands and retake the deer: for property in the deer is in this case by pursuit. *2 Leon.* 201. He that hath any manner of license to hunt in a forest, chase, park, &c. must take heed that he do not abuse his license, or exceed his authority; for if he do, he shall be accounted a trespasser *ab inirio*, and be punished for that fact as if he had no license at all. *Manw.* 280. 288.

Every lord of parliament, sent for by the king, may, in coming and returning, kill a deer or two in the king's forest or chase through which he passes; but it must not be done privily, without the view of the forester, if present; or, if absent, by causing one to blow a horn, because otherwise he may be a trespasser, and seem to steal the deer. *Chart. Forest. c.* 11. *4 Inst.* 308.

Lex Forestæ is a private law, and must be pleaded. *2 Leon.* 209. But it hath been observed, that the laws of the forest are established by act of parliament, and for the most part contained in *Carta de Foresta.* *9 Hen. III. st.* 2. *c.* 2. *34 Edw. I. st.* 5.

By the law of the forest, receivers or trespassers in hunting or killing of deer, knowing them to be such, or any of the king's venison, are principal trespassers; though the trespass was not done to their use or benefit, as the common law requires; by which the subsequent agreement amounts to a commandment: but if the receipt be out of the bounds of the forest, they cannot be punished by the laws of the forest, being not within the forest jurisdiction, which is local. *4 Inst.* 317.

If a trespass be done in a forest, and the trespasser dies, it shall be punished after his death in the life-time of the heir, contrary to the common law. *Hue and cry* may be made by the forest law for trespass, as to venison; though it cannot be pursued but only within the bounds of the forest. *4 Inst.* 294. And for not pursuing hue and cry in the forest, a township may be fined and amerced. In every trespass and offence of the forest in vert or venison, the punishment is, to be imprisoned, ransomed, and bound to the good behaviour of the forest, which must be executed by a judicial sentence by the lord chief justice in *eyre* of the forest.

If any forester find any person hunting without warrant, he is to arrest his body, and carry him to prison, from whence he shall not be delivered without special warrant from the king, or his justices of the forest, &c. But by stat. *1 Edw. III. c.* 8. persons

are bailable if not taken *in the manor*, as with a bow ready to shoot, carrying away deer killed, or smeared with blood, &c. Though if one be not thus taken, he may be attached by his goods. 4 *Inst.* 289.

The warden of the forest shall let such to mainprize until the *eyre* of the forest; or a writ may be had out of the chancery to oblige him to do it; and if he refuse to deliver the party, a writ shall go to the sheriff to attach the warden, &c. who shall pay treble damages to the party grieved, and be committed to prison, &c. Stat. 1 *Edw.* III. c. 8. No officer of the forest may take or imprison any person without due indictment, or *per main oeuvre*, with his hand at the work; nor shall constrain any to make obligation against the assise of the forest, on pain to pay double damages, and to be ransomed at the king's will. Stat. 7 *Rich.* II. c. 4.

A forester shall not be questioned for killing a trespasser, who (after the peace cried unto him) will not yield himself; so as it be not done out of some former malice. Stat. 21 *Edw.* I. st. 1. But if trespassers in a forest, &c. kill a man who opposes them, although they bore no malice to the person killed, it is murder; because they were upon an unlawful act, and therefore malice is implied. *Roll. Abr.* 548. And if murder be committed by such trespassers, all are principals. *Kel.* 87.

If a man comes into a forest in the night-time, the forester cannot justify beating him before he makes resistance; but if he resists, he may justify the battery. Persons may be fined for concealing the killing of deer by others; and so for carrying a gun, with an intent to kill the deer; and he that steals venison in the *forest*, and carries it off on horseback, the horse shall be forfeited, unless it be that of a stranger ignorant of the fact. Where heath is burnt in a *forest*, the offenders may be fined: and if any man cuts down bushes and thorns, and carries them away in a cart, he is finable, and the cart and horses shall be seized by the *forest* laws. But a man may prescribe to cut wood, &c. And every freeman within the *forest* may on his own ground make a mill-dyke, or arable land, without enclosing such arable; but if it be a nuisance to others, it is punishable. *Chart. Forest.* c. 11. 12 *Rep.* 22. And if any having woods in his own ground, within any *forest*, or chase, shall cut the same by the king's license, &c. he may keep them several and enclosed, for seven years after felling. Stat. 22 *Edw.* IV. c. 7.

By *Carta de Forestâ*, 9 *Hen.* III. stat. 2. c. 2. no man shall lose life or member for killing the king's deer in a *forest*, &c. but shall be fined; and if he have nothing to pay the fine, he shall be imprisoned a year and a day; and then be delivered, if he can give good security not to offend for the future; and if not, he shall abjure the realm. Before this statute, it was felony, to hunt the king's deer. 2 *Roll.* 120. To hunt in a *forest*, park, &c. in the night, disguised, if denied or concealed, upon examination before a justice of the peace, it is *felony*: but if confessed, it is only finable. Stat. 1 *Hen.* VII. c. 7. Keepers, &c. may seize instruments used in unlawful cutting of trees. Stat. 4 *Geo.* III. c. 31.

The cruel and insupportable hardships which the forest laws created to the subject, occasioned our ancestors to be as zealous for their reformation, as for the relaxation of the feudal rigours.

and the other exactions introduced by the *Norman* family. And accordingly we find, in history, the immunities of *Carta de Foresta* as warmly contended for, and extorted from the king with as much difficulty, as those of *Magna Charta* itself. By this charter, confirmed in parliament, many forests were disafforested or stripped of their oppressive privileges; and regulations made in the regimen of such as remained. And by a variety of subsequent statutes, together with the long acquiescence of the crown without exerting the forest laws, this prerogative is become no longer a grievance to the subject. *Comm.*

Lands in *Scotland* conveyed by the crown with the right of forestry, carried all the privileges of a royal forest, but no such grants have been made there since 1680.

Stat. 28 *Geo.* II. c. 19. imposes a fine of from 40s. to 5l. on persons convicted of setting fire to goss, furze, heath or fern, in chases or forests. See stats. 39 & 40 *Geo.* III. c. 86. for the better preservation of the timber in the *New Forest*, and for ascertaining the boundaries thereof, and of the lands, of the crown within the same. And stat. 48 *Geo.* III. c. 72. for the increase and preservation of timber in *Dean* and *New Forest*.

See further, as to the forest law, tit. *Black Act, Deer Stealing, Game, Chase, King, Park, Purlicu, Drift of the Forest, &c.*

FORESTAGIUM, Duty payable to the king's foresters. *Chart.* 18 *Edw.* I.

FORESTALLING, *forestallamentum*, from the Sax. *fore*, before, & *stal*, a stall.] To intercept on the highway. *Spelman* says, it is *via obstructio, vel itineris interceptio*; with whom agrees *Coke on Litt.* fol. 161. And, according to *Fleta*, forestalling *significat obstructionem viae vel impedimentum transitus et fugae averiorum, &c.* lib. 1. c. 24. In our law, forestalling is the buying or bargaining for any corn, cattle or other merchandise, by the way, as they come to fairs or markets to be sold, before they are brought thither; to the intent to sell the same again, at a higher and dearer price.

All endeavours to enhance the common price of any victuals or merchandise, and practices which have an apparent tendency thereto, whether by spreading false rumours, or buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, &c. are highly criminal by the common law; and all such offences anciently came under the general appellation of forestalling. 3 *Inst.* 195, 196. And so jealous is the common law of practices of this nature, which are a general inconvenience and prejudice to the people, and very oppressive to the poorer sort, that it will not suffer corn to be sold in the sheaf before thrashed: for by such sale the market is in effect forestalled. 3 *Inst.* 197. *H. P. C.* 152.

Forestalling, *engrossing*, and *regrating*, are offences generally classed together as of the same nature and equally hurtful to the public. *Engrossing* seems derived from the words *in* and *gross* great or whole; and *regrating* from *re*, again, and *grater*, Fr. to scrape, from the dressing or scraping of cloth or other goods in order to sell the same again.

Several statutes were from time to time made against these offences in general, and also specially with respect to particular spe-

cies of goods, according to their several circumstances; all of which, from the 5 & 6 *Edw. VI. c. 14.* downwards, and all acts for enforcing the same, are repealed by stat. 12 *Geo. III. c. 71.* by the preamble of which it should seem that the remedy was found worse than the disease. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

The following were declared to be offences at common law, and not done away by the repeal of the stat. of 5 & 6 of *Edw. VI. c. 14. viz.*

Spreading rumours with intent to enhance the price of hops, in the bearing of hop planters, dealers, and others, that the stock of hops was nearly exhausted, and that there would be a scarcity of hops, &c. with intent to induce them not to bring their hops to market for sale for a long time, and thereby greatly to enhance the price. Engrossing large quantities of hops, by buying from many persons, certain quantities with intent to resell the same for an unreasonable profit, and thereby to enhance the price. Getting into his hands large quantities, by contracting with various persons for the purchase, with intent to prevent the same being brought to market, and to resell at an unreasonable profit, &c. Engrossing hops then growing, by forehand bargains, with like intent. Buying all the growth of hops on certain lands, in certain parishes, by forehand bargains, with intent to sell at an unreasonable price, &c. *Rex v. Waddington, 1 East's Rep. 143,—169.* In which case it was ruled, that to forestall any commodity which is become a common victual and necessary of life, or used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law.

Indictment for engrossing a *great quantity* of fish, geese and ducks, held bad, without specifying the quantity of each. *Rex v. Gilbert, 1 East's Rep. 583.*

The offence of *forestalling* the market is an offence against public trade. This was described by the said stat. 5 & 6 *Edw. VI. c. 14.* to be the buying or contracting for any cattle, merchandise or victual coming in the way to the market, or dissuading persons from bringing their goods or provisions there: or persuading them to enhance the price when there; any of which practices makes the market dearer to the fair trader.

Regrating was described by the same statute to be the buying of corn, or other *dead victual*, in any market; and selling it again in the same market, or within 4 miles of the place. For this also enhances the price of the provisions, as every successive seller must have a successive profit.

Engrossing was also described to be the getting into one's possession or buying up large quantities of corn, or other *dead victuals* with intent to sell them again. This must be of course injurious to the public, by putting it in the power of one or two rich men to raise the price of provisions at their own discretion.

The above descriptions given by the statute serve as a guide for the indictment of these offences at common law, and are therefore here preserved.

The total engrossing of any commodity, with intent to sell it at

an unreasonable price, is an offence indictable and finable at common law. *Cro. Car.* 232.

See stat. 2 & 3 *Edw.* VI. c. 15. which seems yet in force; prohibiting butchers, brewers, bakers, poulterers, cooks and fruiterers, from conspiring not to sell victuals, but at certain prices, on penalty of 10*l.* for the first offence, 20*l.* for the second, 40*l.* for the third, &c. and if such conspiracy be made by any company, or body corporate, the corporation shall be dissolved.

See further, this *Dict.* tit. *Monopoly*, and the several articles to which the same is applied.

FORETOOTH, Striking out the foretooth is a *maihem*. See tit. *Maihem*.

FORFANG OR **FORFENG**, from the Sax. *fore, ante,* and *fangen, prender.* *Antecapitio vel fræventio.*] The taking of provision from any one in fairs or markets, before the king's *purveyors* are served with necessaries for his majesty. *Chart. Hen. I. Hosp. Sanct. Barth. Lond.* anno 1133.

FORFEITURE.

FORISFACTURA, from the Fr. *forfait.*] The effect or penalty of transgressing some law. For an ingenious discussion to prove the propriety and policy of such punishment, see Mr. *Charles Yorke's* "*Considerations on the Law of Forfeitures,*" corrected and enlarged, 8vo. 1775. See also, this *Dict.* tit. *Tenures* III. 10.

Forfeiture is defined by *Blackstone* to be a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements or hereditaments; whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong, which either he alone, or the public together with him, hath sustained. 2 *Comm.* 267.

Lands, tenements and hereditaments may be forfeited in various degrees and by various means. Forfeitures may therefore be divided into *civil* and *criminal*. The latter will be presently considered more at large under this title.

Civil forfeitures arise either by alienation contrary to law, as in *mortmain*; for which, see this *Dict.* under that title; to *aliens*, see tit. *Alien*; or by particular tenants when they are greater than the law entitles them to make. This latter alienation devests the remainder or reversion, and is also a forfeiture to him whose right is attacked thereby. 1 *Inst.* 251.

Forfeiture in civil cases may also accrue by non-presentation to a benefice, when it is called a *lapse*; see this *Dict.* tit. *Advowson*. By *simony*; see that title. By non-performance of *conditions*; see tit. *Condition*. By *waste*; see that title. By breach of copyhold customs; see tit. *Copyhold*; or, lastly, by *bankruptcy*; see that title.

I. *Of Forfeitures in Civil Cases.*

II. *Of Forfeitures in Criminal Cases; and herein,*

1. *Generally for what Crimes such Forfeitures are inflicted, and to what Time they bear relation.*

2. More particularly, what Estates are subject to Forfeiture.

3. When Forfeitures may be seized.

I. As to alienations by particular tenants; if tenant for his own life aliens, by feoffment or fine, for the life of another, or in tail, or in fee; these being estates, which either must or may last longer than his own, the creating them is not only beyond his power, and inconsistent with the nature of his interest, but is also a forfeiture of his own particular estate to him in remainder or reversion. *Litt.* § 415. For this there seems to be two reasons; first, because such alienation amounts to a renunciation of the feudal connection and dependence; it implies a refusal to perform the due renders and services to the lord of the fee, of which fealty is constantly one, and it tends in its consequence to defeat and devest the remainder or reversion expectant: as therefore that is put in jeopardy, by such act of the particular tenant, it is but just, that, upon discovery, the particular estate should be forfeited and taken from him, who has shown so manifest an inclination to make an improper use of it; The other reason is, because the particular tenant, by granting a larger estate than his own, has by his own act determined and put an entire end to his own original interest; and on such determination the next taker is entitled to enter regularly, as in his remainder or reversion. *2 Comm.* 274.

Another reason assigned for these forfeitures is, that the act done is incompatible with the estate which the tenant holds, and against the implied condition on which he holds it. As in the case of a tenant for life or years enfeoffing a stranger in fee-simple, this is a breach of the condition which the law annexes to his estate, *viz.* that he shall not attempt to create a greater estate than he himself is entitled to. *1 Inst.* 215. So if tenant for life, or years, or in fee, commit felony, this is a breach of the implied condition annexed to every feudal donation that they should not commit felony. *2 Comm.* 153.

The same law, which is thus laid down with regard to tenants for life, holds also with respect to all tenants of the mere freehold, or of chattel interests: but if tenant in tail aliens in fee, this is no immediate forfeiture to the remainder-man, but a mere discontinuance of the estate-tail, which the issue may afterwards avoid by due course of law; for he in remainder or reversion hath only a very remote, and barely possible interest therein, until the issue in tail is extinct. See this *Dict.* tit. *Discontinuance*.

But in case of such forfeitures, by particular tenants, all legal estates by them before created, (as if tenant for 20 years grants a lease for 15,) and all charges by them lawfully made on the lands shall be good and available in the law. For the law will not hurt an innocent lessee for the fault of his lessor; nor permit the lessor, after he has granted a good and lawful estate, by his own act to avoid it, and defeat the interest which he himself hath created. *1 Inst.* 233. *2 Comm.* 275.

Equivalent, both in its nature and its consequences, to an illegal alienation by the particular tenant, is the civil crime of *disclaimer*; as to which, see this *Dict.* tit. *Disclaimer*.

If tenant for life, in dower, by the curtesy, or after possibility of issue extinct, or lessee for years, tenant by statute-merchant, sta-

ple, or *elegit*, of lands or tenements that lie in *livery*, shall make any absolute or conditional feoffment in fee, gift in tail, lease for any other life than his own, &c. or levy a fine *sur conuissance de droit*, *come ceo*, &c. or suffer a common recovery thereof; or being impleaded in a writ of right brought against him, join the *mise* upon the mere right, or admit the reversion to be in another; or in a *quid juris clamat*, claim the fee-simple; or if lessee for years being ousted, bring an assise *ut de libero tenemento*, &c. by either of these things, there will be a forfeiture of estate. *Plowd.* 15. 1 *Rep.* 15. 8 *Rep.* 144. *Co. Litt.* 251. *Dyer*, 152. 324. 1 *Bulst.* 219.

But where the land granted by tenant for life, or years, is not well conveyed; or the thing does not lie in *livery*, as a rent, common, or the like, he will not *forfeit* his estate; and, therefore, if a feoffment, gift in tail, or lease for another's life, made by the tenant for life, is not good, for want of words in making it, or due execution in the livery and seisin, this shall *not* produce a forfeiture. 2 *Rep.* 55.

When tenant in tail makes leases, not warranted by the statute, a copyholder commits waste, refuses to pay his rent, or do suit of court; one to whom an estate is granted upon condition, does not perform the same; in all these cases forfeitures are incurred. 1 *Rep.* 15.

Entry for a forfeiture ought to be by him who is next in reversion or remainder after the estate forfeited. As, if tenant for life or years commits a forfeiture, he who has the *immediate* reversion or remainder, ought to enter, though he has the fee, or only an estate-tail. 1 *Roll.* 857. l. 45. 50. 858. l. 5.

It shall be a dispensation of the forfeiture, if he in reversion or remainder be a party to the estate made, and accept it; as if a husband, seised in right of his wife for life, leases to him in reversion for his own life. 1 *Roll.* 856. l. 10.

Also *offices* may be forfeited by neglect of duty, &c. See tit. *Office*.

II. 1. The true reason, and only substantial ground, of any FORFEITURE FOR CRIMES, consists in this: that all property is derived from society, being one of those civil rights conferred on individuals in exchange for that degree of natural freedom, which every man must sacrifice when he enters into social communities. If therefore a member of any national community violates the fundamental contract of his association, by transgressing the municipal law, he forfeits his rights to such privileges as he claims by that contract; and the state may very justly resume that portion of property, or any part of it, which the laws have before assigned him. Hence in every offence of an atrocious kind, the laws of *England* have exacted a total confiscation of the moveables or personal estate; and in many cases perpetual, in others only a temporary loss, of the offender's immoveables or landed property; and have vested them both in the king, as the person supposed to be offended; being the one visible magistrate in whom the majesty of the public resides. 1 *Comm.* 299.

The offences which induce a forfeiture of lands and tenements are principally the following six: 1. *Treason*. 2. *Felony*. 3.

Misprision of treason. 4. *Præmunire.* 5. *Drawing a weapon on a judge;* or striking any one in the presence of the king's courts of justice. 6. *Papish recusancy;* or non-observance of certain laws enacted in restraint of papists.

Forfeiture in criminal cases is two-fold; of real and of personal estates. First as to *real estates.*

By common law, on attainder of high treason, a man forfeits to the king all his lands and tenements of inheritance, whether fee-simple or fee-tail, and all his right of entry on lands and tenements, which he had at the time of the offence committed, or at any time afterwards, to be for ever vested in the crown. And also the profits of all lands and tenements, which he had in his own right for life or years, so long as such interest shall subsist. *Co. Litt.* 392. 3 *Inst.* 19. 1 *Hale's P. C.* 240. 2 *Hawk. P. C.* c. 49.

This forfeiture relates backwards to the time of the treason committed, so as to avoid all intermediate sales and encumbrances, but not those before the fact. 3 *Inst.* 211. A wife's jointure is not forfeitable for the treason of her husband, because settled upon her previous to the treason committed; but her dower is forfeited by the express provision of stat. 5 & 6 *Edw. VI. c.* 11. repealing, in that particular, stat. 1 *Edw. VI. c.* 12. The husband notwithstanding shall be tenant by the curtesy of the wife's lands if the wife be attainted of treason, for that is not prohibited by the statute. 1 *Hale's P. C.* 359. But though, after attainder, the forfeiture relates back to the time of the treason committed, yet it does not take effect unless an attainder be had, of which it is one of the fruits; and therefore if a traitor dies before judgment pronounced, or is killed in open rebellion, or is hanged by martial law, it works no forfeiture of his lands, for he never was attainted of treason; and by the express provision of stat. 34 *Edw. III. c.* 12. there shall be no forfeiture of lands for treason, of dead persons, not attainted in their lives; yet if the chief justice of the king's bench, (the supreme coroner of all *England*,) in person, upon the view of the body of one killed in open rebellion, records it, and returns the record into his own court, both lands and goods shall be forfeited. 4 *Rept.* 57.

Forfeiture of lands and tenements to the crown for treason, is by no means derived from the feudal policy, but was antecedent to the establishment of that system in this island. See this *Dict. tit. Tenures* III. 10. But in certain treasons relating to the coin, it is provided by some of the more modern statutes which constitute the offence, that it shall work no forfeiture of lands, save only for the life of the offender; and by all, that it shall not deprive the wife of her dower. See stats. 5 *Eliz. c.* 11. 18 *Eliz. c.* 1. 8 & 9 *Wm. III. c.* 26. 15 & 16 *Geo. II. c.* 28. And with a view to abolish such hereditary punishment entirely, it was provided by stat. 7 *Ann. c.* 21. § 10. that after the decease of the Pretender, no attainder for treason should extend to the disinheriting of any heir, nor to the prejudice of any person other than the traitor himself. By a subsequent statute, namely the stat. 17 *Geo. II. c.* 39. the operation of the indemnifying clauses in stat. 7 *Ann. c.* 21. was still farther suspended till the death of the sons of the late Pretender. And by 39 *Geo. III. c.* 93. the provisions of both these acts were repealed; so that the forfeiture for treason stands as it

did before the passing of the act of 7 *Ann. c. 21.* See 4 *Comm.* 384. and this *Dict. tit. Attainder.*

In *petit treason*, misprision of treason and felony, the offender also forfeits all his chattel interests absolutely, and the profits of all estates of freehold during life, and after his death all his lands and tenements in fee-simple (but not those in tail) to the crown for a short period of time; for the king shall have them for a year and a day, and may commit therein what waste he pleases, which is called the king's *year, day, and waste.* 2 *Inst.* 37. 3 *Inst.* 392. Formerly the king had a liberty of committing waste on the lands of felons by pulling down their houses, extirpating their gardens, ploughing their meadows, and cutting down their woods. But this tending greatly to the prejudice of the public, it was agreed in the reign of *Henry I.* that the king should have the profits of the land for a year and a day, in lieu of the destruction he was otherwise at liberty to commit; and therefore *Magna Carta, c. 22.* provides, that the king shall hold only such lands for a year and a day, and then restore them to the lord of the fee, without any mention of waste. See *Mirr. c. 4. § 16.* *Fleta, l. 1. c. 28.* But the stat. 17 *Edw. II. de prerogativa regis,* seems to suppose that the king shall have his year, day, and waste, and not the year and day instead of waste; which Lord *Coke* and the *Mirror* very justly consider as an encroachment, though a very ancient one, of the royal prerogative. *Mirr. c. 5. § 2.* 2 *Inst.* 37.

This year, day, and waste are now usually compounded for; but otherwise they regularly belong to the crown, and after their expiration the land would have descended to the heir, (as in *gavelkind* tenure it still does,) did not its feudal quality intercept such descent and give it by way of escheat to the lord. See *tit. Tenures, Escheat.*

These forfeitures of lands for felony also arise only upon attainder; and therefore a *felo de se* forfeits no lands of inheritance or freehold, for he never is attainted as a felon. 3 *Inst.* 55. They likewise relate back to the time of the offence committed, as well as forfeitures for treason; so as to avoid all intermediate charges and conveyances. 4 *Comm.* 386.

These are all the forfeitures of real estates created by the common law as consequential upon attainders by judgment of death or outlawry. The particular forfeitures created by the statutes of *praemunire* and others are here omitted, being rather a part of the judgment and penalty inflicted by the respective statutes, than consequences of such judgment, as in treason and felony they are. See *past, II.*

As a part of the forfeiture of real estates, may be mentioned the forfeiture of the profits of lands during life; which extends to two other instances besides those already spoken of; the striking in *Westminster Hall*, or drawing a weapon upon a judge there sitting in the king's courts of justice. 3 *Inst.* 141. And it seems that the same forfeiture is incurred by rescuing a prisoner in or before any of the courts there, committed by the judges. *Cro. Jac.* 367.

The forfeiture of goods and chattels accrues in every one of the higher kinds of offence; in high treason or misprision thereof; petit treason; felonies of all sorts, whether clergyable or not: self-

murder, or *felo de se*; petit larceny; standing mute; challenging above thirty-five jurors; and the abovementioned offences of striking, &c. in *Westminster Hall*. For *flight* also, on an accusation of treason, felony, or even petit larceny, whether the party be found guilty or acquitted, if the jury find the flight, the party shall forfeit his goods and chattels; for the very flight is an offence, carrying with it a strong presumption of guilt; and is at least an endeavour to elude and stifle the course of justice prescribed by the law. But the jury very seldom find the flight; forfeiture being looked upon, since the vast increase of personal property, as too large a penalty for an offence to which a man is prompted by the natural love of liberty. 4 *Comm.* 387.

There are some remarkable differences between the forfeiture of lands, and of goods and chattels. 1. Lands are forfeited upon *attainder*, and not before: goods and chattels are forfeited by *conviction*. Because in many of the cases where goods are forfeited, there never is any attainder; which happens only where judgment of death or outlawry is given; therefore in those cases the forfeiture must be upon conviction, or not at all; and being necessarily upon conviction in those, it is so ordered in all other cases; for the law loves uniformity: 2. In outlawries for treason or felony, lands are forfeited only by the judgment, but the goods and chattels are forfeited by a man's being first put in the exigent, without staying till he is *quinto exactus*, or finally outlawed, for the secreting himself so long from justice is construed a flight in law. 3 *Inst.* 232. (See this *Dict.* tit. *Outlawry*.) 3. The forfeiture of lands has relation to the time of the fact committed so as to avoid all subsequent sales and encumbrances; but the forfeiture of goods and chattels has no relation backwards, so that those only which a man has at the time of conviction, shall be forfeited. Therefore a traitor or felon may *bonâ fide* sell any of his chattels, real or personal, for the sustenance of himself or family between the fact and conviction. 2 *Hawk. P. C. c.* 49. For personal property is of so fluctuating a nature that it passes through many hands in a short time; and no buyer could be safe if he were liable to return the goods which he had fairly bought, provided any of the prior vendors had committed a treason or felony. Yet if they be collusively and not *bonâ fide* parted with, merely to defraud the crown, the law, and particularly stat. 13 *Eliz. c.* 5. will reach them; for they are all the while truly and substantially the goods of the offender; and as he, if acquitted, might recover them himself, as not parted with for a good consideration, so in case he happens to be convicted, the law will recover them for the king. 4 *Comm.* 388. See *Gordon's case*, *Dom. Proc.*

2. Where land comes to the crown, as forfeited by *attainder of treason*, all mesne tenures of common persons are extinct; but if the king grant it out, the former tenure shall be revived, for which a petition of right lies. 2 *Hale's Hist. P. C.* 254. In *treason*, all lands of inheritance, whereof the offender was seised in his own right, were forfeited by the common law; and rights of entry, &c. And the inheritance of things not lying in tenure, as of rent-charges, commons, &c. shall be forfeited in *high treason*: but no *right of action* whatsoever to lands of inheritance is forfeit-

ed, either by the common or statute law. 2 *Hawk. P. C. c. 49.* See *Gordon's case, in Dom. Proc.*

By stat. 26 *Hen. VIII. c. 13.* all lands, tenements, &c. of inheritance are forfeited in *treason*. And the king shall be adjudged in possession of lands and goods forfeited for treason on the attainder of the offender, without any office found, saving the rights of others. See stat. 33 *Hen. VIII. c. 20.* Lands and hereditaments in *fee-simple* and *fee-tail*, are forfeited in *high reason*: but lands in *tail* could not be forfeited only for the life of tenant in tail, till the statute 26 *Hen. VIII. c. 13.* by which statute they may be forfeited.

Upon *outlawry* in *treason* or *felony*, the offender shall forfeit as much as if he had appeared, and judgment had been given against him; so long as the outlawry is in force. 3 *Inst. 52. 212.*

Gavelkind land in *Kent* is not forfeited by committing of *felony*; and by a *felony only*, *entailed lands* are not forfeit. *S. P. C. 3. 26.*

Land that one hath in trust; or goods and chattels in right of another, or to another's use, &c. will not be liable to forfeiture. Though leases for years, in a man's own, or his wife's right, estates in joint-tenancy, &c. and all statutes, bonds, and debts due thereby, and upon contracts, &c. shall be forfeited. *Co. Litt. 42. 151. Staund. 188.*

A married man guilty of *felony*, forfeits his wife's term; and if a wife kill her husband, the husband's goods are forfeited. *Jenk. Cent. 65.* In *manslaughter*, the offender forfeits goods and chattels, and in *chance-medley* and *se defendendo*, goods and chattels; but the offenders may have their pardon of course. *Co. Litt. 319.*

Those that are hanged by *martial law* in the time of war, forfeit no lands. *Co. Litt. 13.* And for robbery or piracy, &c. on the sea, if tried in the court of admiralty, by the *civil law*, and not by jury, there is no forfeiture: but if a person be attainted before commissioners by virtue of the stat. 28 *Hen. VIII. c. 15.* there it works a forfeiture. 1 *Lill. Abr.*

In cases of felony the profits of lands whereof a person, attainted of felony, is seised of an estate of inheritance in right of his wife; or of an estate for life only in his own right; are forfeited to the king, and nothing is forfeited to the lord. 3 *Inst. 19. Fitz. Ass. 166.*

Goods of persons that *fly* for a felony, are forfeited to the lord of the franchise, when flight is found of record. 2 *Inst. 281.*

In a *præmunire*, lands in *fee-simple* are forfeited, with goods and chattels. *Co. Litt. 129.*

Before the statute of 1 *Edw. VI. cap. 12.* the wife not only lost her dower at common law, but also her dower *ad ostium ecclesie*, or *ex assensu patris*, or by special custom, (except that of gavelkind,) by the husband's attainder of treason or capital felony, whether committed before or after marriage. *Co. Litt. 31. b. 37. a. Al. a. Fitz. N. B. 150. Perk. § 308. Bro. tit. Dower, 82. Plowd. 261.*

But the wife forfeited lands given jointly to her husband and her, whether by way of frank-marriage or otherwise, only for the year, day, and waste. *Co. Litt. 37. 3 Inst. 216.*

By stat. 1 *Edw. VI. cap. 12. par. 17.* it was enacted that albeit any person shall be attainted of any treason or felony whatsoever; yet notwithstanding every woman, that shall fortune to be the

wife of the person so attainted, shall be endowable and enabled to demand, have, and enjoy her dower, in like manner and form as though her husband had not been attainted, &c. This however was repealed as to treason by 5 & 6 *Edw. VI. cap. 11. pars. 9.* See *ante, I.*

Though Lord Coke expressly makes dower *ex assensu patris*, as well as the dowers at common law and *ad ostium ecclesie*, liable to be defeated at common law, by the husband's treason or felony; 1 *Inst. 37. a.* yet some have inclined to think that this stat. 5 & 6 *Edw. VI. c. 11.* doth not extend to dower *ex assensu patris*, so that that shall not be forfeitable on the treason of the husband. And in 1 *Inst. 35. b.* Lord Coke mentions, that according to some opinions the wife loses dower *ex assensu patris*, if after the assent the father was attainted of treason. See 1 *Inst. 41. a.* in note.

If the husband seised of lands in fee, makes a feoffment and then commits treason, and is attainted of it, the wife shall not recover dower against the feoffee. *Bendl. 56. Dyer, 140. Co. Litt. 111. a.* So if the husband is attainted of treason, and afterwards pardoned, yet the wife shall not recover dower; but of lands purchased by the husband after the pardon, the wife shall be endowed. 3 *Leon. 3. Perk. sect. 391.*

If a husband having levied a fine with proclamation, is erroneously attainted of treason, and the five years pass after his death, and then the outlawry is reversed, the fine and non-claim are no bar till five years are passed after the reversal, because the wife could not sue for her dower while the attainder stood in force, neither could she any way reverse it. 3 *Inst. 216. Moor, 639. pl. 879.*

After the making of the abovementioned statute 1 *Edw. VI. cap. 12.* it seems to have been doubted, whether the wife should not lose her dower in case of any new felony made by act of parliament; therefore where several offences have been made felony since, care has been taken to provide for the wife's dower. 2 *New Abr. 584.* See 12 *Vin. Abr. tit. Forfeiture. 2 Hawk. P. C. c. 49.*

If a woman after a rape, consent to the ravisher, she shall lose her dower after the death of her husband, &c. Stat. 6 *Rich. II. c. 6.* And if any maiden or woman child above twelve, and under sixteen years of age, shall agree to be taken away and deflowered, or contract with any man for marriage against the will and without the consent of her father; or, if he be dead, her mother or guardian appointed by her father's will, she shall forfeit her land of inheritance for her life. 4 & 5 *P. & M. c. 8.*

Artificers going out of the kingdom and teaching their trades to foreigners, are liable to forfeit their lands, &c. by stat. 5 *Geo. I. c. 27.* Similar forfeitures likewise are inflicted by several other penal statutes. See tit. *Manufacturers.*

In all cases where a penalty or forfeiture is given by statute, without saying to whom it shall be, or a limitation for a recompense for the wrong to the party, it belongs to the king. *Stra. 50. 828. 2 Vent. 267.* And such forfeitures shall be construed favourably. *Cowp 585. 588.*

3. Goods or lands of one arrested for felony, shall not be seized before he is convict or attaind of the felony; on pain of forfeiting double value. Stat. 1 *Rich. III. c. 3.* Goods of a felon, &c. can-

not be seized before *forfeited*; though they may be inventoried, and a charge made thereof before indictment. *Wood's Inst.* 659. Where goods of a felon are pawned before he is attainted, the king shall not have the *forfeiture* of the goods till the money is paid to him to whom they were pawned. *3 Inst.* 17. *2 Nels. Abr.* 874, 875.

After conviction by judgment, or outlawry, for high treason, &c. a commission goes to persons named by the king or by the attorney-general, to inquire, what lands and tenements the offender had at the time of the treason committed, and the value; and that they seize them into the king's hands. And the inquisition taken thereon shall be returned to the court of *exchequer*, and filed in the office of the king's remembrancer. *Lut.* 997. So after conviction for felony, a *scire facias* shall go against the vill, or any other, who has the goods in his custody. *Staundf. P. C.* 194. But if any one has title to the goods or lands found by inquisition to be the goods or lands of the offender, he may make his claim by pleading his title. *Lut.* 998. To which the attorney-general shall demur, or reply. *Vide Com. Dig.* tit. *Prærogative*, (D. 83, 84.)

A copyholder surrenders to the use of his will; the devisee is convicted of felony and hanged before admittance, the lands are not forfeited to the lord, but descend to the heir of the surrenderor. *2 Wils.* 13.

Forfeiture differs from *confiscation*, in that *forfeiture* is more general; whereas *confiscation* is particularly applied to such as are *forfeit* to the king's *exchequer*, and *confiscate* goods are said to be such as nobody doth claim. *Staundf. P. C.* 186.

There is a full *forfeiture*, *plena forisfactura*, otherwise, called *plena wita*, which is a *forfeiture* of life and member, and all that a man hath. *Leg. Hen. I. c.* 88. And there is mention in some statutes, of *forfeiture*, at the king's will, of body, lands, and goods, &c. *4 Inst.* 66. See further on this subject, this *Dict.* tit. *Attainder*, *Corruption of Blood*, *Felony*, *Treason*, &c. and *Com. Dig.* tit. *Forfeiture*.

FORFEITURE OF MARRIAGE, *forisfactura maritagi.*] A writ which anciently lay against him, who, holding by knights-service, and being under age, and *unmarried*, refused her whom the lord offered him without his disparagement, and married another. *Fitz. N. B. fol.* 141. *Reg. Orig. fol.* 163. See tit. *Tenures*.

FORFEITED ESTATE. Several statutes have been from time to time passed, appointing *commissioners of forfeited estates*, on rebellions in this kingdom and *Ireland*. Thus by stat. 11 & 12 *Wm. III. c.* 3. all lands and tenements, &c. of persons attainted or convicted of treason or rebellion in *Ireland*, were vested in several commissioners and trustees for sale thereof. And by several stats. *temp. Geo. I.* commissioners were appointed to inquire of *forfeited estates* in *England* and *Scotland*, on the rebellion at *Preston*, &c. And the estates of persons attainted of treason were vested in his majesty for public uses; but afterwards in trustees to be sold for the use of the public; and it was provided that the purchasers should be *protestants*.

FORGAVEL, *forgabulum.*] A small reserved rent in money, or quit-rent. *Cartular. Abbat. de Radings. MS. f.* 88.

FORGE, *forgia*.] A smith's *forge*, to melt and work iron. *Chart. Hen. II.*

FORGERY, from Fr. *forger*, i. e. *accudere, fabricare*, to beat on an anvil, to *forge* or form.] The fraudulent making or alteration of any deed, writing, instrument, register, stamp, &c. to the prejudice of another man's right. An offence punishable, according to its circumstances, by fine, imprisonment, pillory, transportation and death.

By stat. 5 *Eliz. c. 14.* to forge or make, or knowingly to publish or give in evidence, any forged deed, court-roll, or will, with intent to affect the right of real property, either freehold or copyhold, is punished by a forfeiture to the party grieved, of double costs and damages; by the offender's standing in the pillory, and having both his ears cut off and his nostrils slit and seared; by forfeiture to the crown of the profits of his lands, and by perpetual imprisonment. For any forgery relating to a *term of years*, or *annuity, bond, obligation, acquittance, release or discharge*, of any debt or demand of any personal chattels, the same forfeiture is given to the party grieved, and on the offender is inflicted the pillory, loss of one ear, and a year's imprisonment. The second offence, in both cases, being felony without benefit of clergy.

Besides this general act, a multitude of others, since the revolution, when paper credit was first established, have inflicted *capital punishment* on the following species of forgery, *viz.* The forging, altering, or uttering as true when forged, of any *bank notes, bills or other securities*; see stats. 8 & 9 *Wm. III. c. 20. § 36.* 11 *Geo. I. c. 9.* 12 *Geo. I. c. 32.* 15 *Geo. II. c. 13.* 13 *Geo. III. c. 79.* 41 *Geo. III. (U. K.) c. 39.* and 45 *Geo. III. c. 89.*; and this *Dict. tit. Bank of England. Drafts or orders of public wards or offices*; by various acts. *Exchequer bills*; by the several acts for issuing them. *South Sea bonds*; see stats. 9 *Ann. c. 21.* 6 *Geo. I. cc. 4. 11.* 12 *Geo. I. c. 32.* *Lottery tickets or orders*; by the several lottery acts. *Army or navy debentures*; stats. 5 *Geo. I. c. 14.* 9 *Geo. I. c. 5.* *East-India bonds*; stat. 12 *Geo. I. c. 32.* Writings under the seal of the *London or Royal Exchange Assurance*; stat. 6 *Geo. I. c. 18.* and of other corporations by the statutes establishing them. Of the *hand-writing* of the receiver of the præ-fines; stat. 32 *Geo. II. c. 14.* or of the accountant-general and other officers of the court of chancery. Of a *letter of attorney* or other power to receive or transfer *stock or annuities*; of *transfers and dividend warrants*; and on the *personating a proprietor* thereof to receive or transfer such funds or dividends. Stats. 8 *Geo. I. c. 22.* 9 *Geo. I. c. 12.* 31 *Geo. II. c. 22. § 77.* 33 *Geo. III. c. 30.* Also on the *personating* or procuring to be personated any seaman or person entitled to wages, prize-money, &c. for *perjury* in obtaining *probate or administration* to receive such wages, &c. and the forging, procuring to be forged, or publishing a forged *seaman's will and power*. Stats. 31 *Geo. II. c. 10.* 9 *Geo. III. c. 30.* and see stat. 32 *Geo. III. c. 34.* to which may be added, counterfeiting *Mediterranean passes* from the admiralty, stat. 4 *Geo. II. c. 18.* the *forging or imitating stamps* to defraud the public revenue, by the several stamp acts. [The *re-using* them is made single felony by stat. 12 *Geo. III. c. 48.* punishable with seven years transportation.] Forging of any marriage register or license, stat. 26

Geo. II. c. 33. Counterfeiting or removing *stamps* or mark on *plate*, 24 Geo. III. st. 2. c. 53. [A similar offence is punishable with fourteen years' transportation by stat. 13 Geo. III. cc. 52. 59.] Forging the *frank* on a general post letter. Stat. 24 Geo. III. st. 2. c. 37.

Besides these there are certain general laws with regard to forgery. By stat. 2 Geo. II. c. 25. the *first offence* in forging or procuring to be forged, acting or assisting therein, or uttering or publishing as true any forged *deed, will, bond, bill of exchange, promissory note*, and endorsement or assignment of such bill or note, or any acquittance or *receipt* for money or goods, with an intention to defraud any person, (or corporation, stat. 31 Geo. II. c. 22. § 78.) is made *felony* without benefit of clergy. And by stats. 7 Geo. II. c. 22. 18 Geo. III. c. 18. it is equally penal to forge or cause to be forged, or uttered as true, a counterfeit *acceptance* of a bill of exchange, or the number or principal sum of any *accountable receipt*, for any note, bill, or other security for money, or any warrant or order for payment of money, or delivery of goods.

By 45 Geo. III. c. 89. § 1. consolidating and amending the provisions of former acts, the penalty of felony without clergy, is enacted against all persons who shall falsely make, forge, counterfeit or alter, (or cause or procure to be so done, or willingly act or assist in so doing,) any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note, or any endorsement, assignment or acceptance of any such bill or note, or any acquittance or receipt for money or goods, or any accountable receipt for any security for money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any person or corporation: and the like penalty on all persons who shall offer, dispose of, or put away any such forged deed, will, or instrument, knowing it to be forged, and with intent to defraud as aforesaid.

By these, and a number of other general and special provisions, there is now hardly a case possible to be conceived wherein forgery that tends to defraud, whether in the name of a real or fictitious person, is not made a capital crime. See *Fost.* 116. and this *Dict. tit. Bills of Exchange V. 3.*

A deed forged in the name of a person who never had existence is within the stat. 2 Geo. II. c. 25. for the statute doth not use the words the *deed of any person*, or the deed of *another*, or any words of like import, but *any deed*. Lord *Coke's* description of forgery, (3 *Inst.* 169.) "when the act is done in the name of another person," is apparently too narrow, and only takes in that species of forgery which is most commonly practised; but there are many other species of forgery which will not come within the letter of that description. *Fost.* 116.

There can be no forgery where none can be prejudiced by it but the person doing it. 1 *Salk.* 375.

Forgery, by the *common law*, extends to false and fraudulent making or altering of a deed or writing, whether it be a matter of record, in which seems to be included a parish register, which is punishable by fine, imprisonment, and corporal punishment at the discretion of the court, or any other writing, deed, or will. 3 *Inst.* 169. 1 *Roll. Abr.* 65. 1 *Hawk. P. C.* c. 70. Not only where one makes a false deed, but where a fraudulent alteration is made of a true deed, in a material part of it, as by making a lease of the

manor of *Dale*, and it appears to be a lease of the manor of *Sale*, by changing the letter *D.* into an *S.* or by altering a bond, &c. for 500*l.* expressed in figures, to 5,000*l.* by adding a new cypher, these are *forgery*: so it is, if one finding another's name at the bottom of a letter, at a considerable distance from the other writing, causes the letter to be cut off, and a general release to be written above the name, &c. 1 *Hawk. P. C. c. 70.*

Also a writing may be said to be *forged*, where one being directed to draw up a will for a sick person, doth insert some legacies therein falsely of his own head, though there be no *forgery* of the hand or seal; for the crime of *forgery* consists as well in endeavouring to give an appearance of truth to a mere falsity, as in counterfeiting a man's hand, &c. 1 *Hawk. P. C. c. 70.* 3 *Inst.* 170. But a person cannot regularly be guilty of *forgery* by an act of omission; as by omitting a legacy out of a will, which he is directed to draw for another; though it has been held, that if the wilful omission of a bequest to one, cause a material alteration in the limitation of an estate to another, as if the deviser directs a gift for life to one man, and the remainder to another in fee, and the writer omit the estate for life, so that he in remainder hath a present estate upon the death of the deviser, not intended to pass, this is a *forgery*. *Noy*, 118. *Moor*, 760.

If a feoffment be made of land, and livery and seisin is not endorsed when the deed is delivered, and afterwards on selling the land for a valuable consideration to another, livery is endorsed upon the first deed, this hath been adjudged *forgery* both in the feoffor and feoffee; because it was done to deceive an honest purchaser. *Moor*, 665. And when a person knowingly falsifies the date of a second conveyance, which he had no power to make, in order to deceive a purchaser, &c. he is said to be guilty of *forgery*. 3 *Inst.* 169. 1 *Hawk. P. C. c. 70.*

It seems to be no way material, whether a *forged* instrument be made in such manner, that, if it were in truth such as it is counterfeited for, it would be of validity or not. 1 *Sid.* 142. The counterfeiting writings of an inferior nature, as letters and such like, it hath been said, is not properly *forgery*, but the deceit is punishable. But in the case of *John Ward*, of *Hackney*, it was determined that to forge a release or acquittance for the delivery of goods, although not under seal, was *forgery* at common law. See *Barn. K. B.* 10. *Ld. Raym.* 737. 1461. 5 *Mod.* 137. *Raym.* 81. *Str.* 747.

Where there is a penalty in an obligation, &c. the party grieved by a *forged* release thereof, shall recover double the *penalty* as damages, and not double the debt appearing in the condition. 3 *Inst.* 172. If a person is informed by another that a deed is *forged*, if he afterwards publishes it as true, he is within the danger of the statute. 3 *Inst.* 171. The king may pardon the corporal punishment of *forgery* which tends to common example; but the plaintiff cannot release it. If the plaintiff release or discharge the judgment or execution, &c. it shall only discharge the costs and damages, and the judges shall proceed to judgment upon the residue of the pains, and award execution upon the same. 5 *Rep.* 50.

A person convicted of *forgery*, and adjudged to the pillory, &c.

whereby he becomes infamous, is not allowed to be a witness; but such conviction is a good exception to his evidence. And one convicted of this crime may be challenged on a jury, so as to be incapable to serve as a juror; and it hath been holden, that exceptions to persons found guilty of perjury or *forgery*, as well as felony, &c. are not salved by a pardon. 2 *Hawk. P. C. c.* 43. § 25. The court of *B. R.* will not ordinarily, at the prayer of the defendant, grant a *certiorari* for a removal of an indictment of *forgery*, &c. 1 *Sid.* 54. See tit. *Certiorari; Indictment*. See further on this subject of *forgery*, 1 *Hawk. P. C. c.* at length.

FORINSECUS, Outward, or on the outside. *Kennet's Gloss.*

FORINSECUM MANERIUM, The manor as to that part of it which lies without the town, and not included within the liberties of it. *Paroch. Antiq.* 351.

FORINSECUM SERVITIUM, The payment of extraordinary aid, opposed to *intrinsicum servitium*, which was the common and ordinary duties, within the lord's court. *Kennet's Gloss.* See tit. *Foreign Service*.

FORISBANNITUS, Banished. *Mat. Paris. anno* 1245.

FORISFAMILIARI. When a son accepts of his father's part of lands, in the life-time of the father, and is contented with it, he is said *forisfamiliari* to be discharged from the family, and cannot claim any more. *Blount*.

FORLAND, or *foreland, forlandum.*] Lands extending further or lying before the rest. A *promontory*. *Mon. Angl. tom.* 2. fol. 332.

FORLER-LAND. Land in the bishopric of *Hereford*, granted or leased *dum episcopus in episcopatu steterit*, so as the successor might have the same for his present revenue. This custom has been long since disused, and the land thus formerly granted is now let by lease as other lands, though it still retains the name by which it was anciently known. *Butterfield's Surv.* 56.

FORM, Is required in law proceedings, otherwise the law would be no art, but it ought not to be used to ensnare or entrap. *Hob.* 232. Matters of *form* in pleas that go to the action, may be helped on a general demurrer; as when a plea is only in abatement. 2 *Ld. Raym.* 1015: The formal part of the law or method of proceeding, cannot be altered but by parliament; for, if once those were demolished, there would be an inlet to all manner of innovation in the body of the law itself. 1 *Comm.* 142.

FORMA PAUPERIS, See tit. *Costs* II.

FORMEDON, *breve de formâ donationis.*] A writ that lieth for him who hath right to lands or tenements by virtue of any *entail*.

Upon alienation by a tenant in tail, whereby the estate-tail is discontinued, and the remainder or reversion is, by failure of the particular estate, displaced and turned to a mere right, the remedy is by this action of *formedon*, (*secundum formam doni*), which is in the nature of a writ of right, and is the highest action that tenant in tail can have. *Finch's L.* 267. *Co. Litt.* 316. For tenant in tail cannot have an absolute writ of right, which is confined to such only as claim in fee-simple; and for that reason this writ of *formedon* was granted him by the statute *de donis*, (*Westm.* 2. 13

Edw. I. c. 1.) which is therefore emphatically called *his writ of right*. *Fitz. N. B. 255.*

This writ is distinguished into three species; a *formedon* in the *descender*, in the *remainder*, and in the *reverter*.

A writ of *formedon* in the *descender* lieth where a gift in tail is made, and the tenant in tail aliens the lands entailed, or is disseised of them and dies; in this case the heir in tail, shall have this writ of *formedon* in the *descender*, to recover these lands so given in tail, against him who is then the actual tenant of the freehold. In which case the demandant is bound to state the manner and form of the gift in tail, and to prove himself heir *secundum formam doni*. *Fitz. N. B. 211, 212.*

A *formedon* in the *remainder* lieth where a man giveth lands to another for life or in tail, with remainder to a third person in tail or in fee; and he who hath the particular estate dieth without issue inheritable, and a stranger intrudes upon him in remainder, and keeps him out of possession. In this case the remainder-man shall have this writ of *formedon* in the remainder, wherein the whole form of the gift is stated, and the happening of the event upon which the remainder depended. This writ is not given in express words by the *statute de donis*; but is founded upon the equity of the statute, and upon this maxim in law, that if any one hath a right to land, he ought also to have an action to recover it. See *Fitz. N. B. 217.*

A *formedon* in the *reverter* lieth where there is a gift in tail, and afterwards by the death of the donee or his heirs without issue of his body, the reversion falls in upon the donor, his heirs or assigns; in such case the reversioner shall have this writ to recover the lands, wherein he shall suggest the gift, his own title to the reversion minutely derived from the donor, and the failure of issue upon which his reversion takes place. *Fitz. N. B. 219. 8 Rep. 88.* This lay at common law, before the *statute de donis*, if the donee aliened before he had performed the condition of the gift by having issue, and afterwards died without any. *Finch's L. 268.*

The time of limitation in a *formedon*, by stat. 21 *Jac. I. c. 16.* is twenty years, within which space of time after his title accrues, the demandant must bring his action, or else is for ever barred. See 3 *Comm. 191—193.*

There is a writ of *formedon in descender*, where *partition* of lands, held in tail, is made among parceners, &c. and one alieneth her part; in this case her heir shall have this writ; and by the death of one sister without issue, the partition is made void, and the other shall have the whole land as heir in tail. Also there is a writ of *formedon insimul tenuit*, that lies for a coparcener against a stranger upon the possession of the ancestor, which may be brought without naming the other coparcener who hath her part in possession. This writ may be likewise had by one heir in *gavelkind*, &c. of lands entailed; and where the lands are held without partition. *New Nat. Brev. 476, 477. 481.*

Where a fee-simple is demanded in a *formedon in reverter*, the taking of the profits ought to be alleged in the donor and donee: if an estate tail is demanded, it must be alleged in the donee only. 1 *Lutw. 96.*

There are several pleas both in bar and in abatement, which the tenant may plead to this action; such as non-tenure, which is a plea in abatement, and by which the tenant shows, that he is not tenant of the freehold, or of some part thereof, at the time of the writ brought, or at any time since, which is called the pleading non-tenure generally. *Booth*, 28.

Special non-tenure is where the tenant shows what interest and estate he hath in the land demanded, as that he is tenant for years, in ward, by statute-merchant, *elegit*, or the like; and therefore the plea of special non-tenure must always show who is tenant. *Booth*, 29. See 1 *Brownl.* 153.

At common law, non-tenure of parcel of an entire thing, as a manor, &c. abated the whole writ; but now by the stat. 25 *Edw.* III. *cap.* 16. it is enacted, "That by the exception of *non-tenure of parcel*, no writ shall be abated, but only for *that parcel* whereof the non-tenure was alleged." *Booth*, 29. 1 *Mod.* 181.

If the tenant pleads *non-tenure* of the whole, he need not show who is tenant; but in a plea of *non-tenure of parcel*, he must show who is tenant, and this even before the statute; for the common law would not suffer a writ, good in part, to be wholly destroyed, except the tenant showed the demandant how he might have a better. 1 *Mod.* 181. The tenant cannot, after a general imparlance, plead non-tenure of part, though he may plead non-tenure of the whole. 3 *Lev.* 55.

The writ of *formedon* is now rarely brought; the trying titles by *ejectment* supplying its place in an easier manner. See *Booth on Real Actions*.

FORMELLA, A certain weight of about 70lbs. mentioned in the *statute of weights and measures*. Stat. 51 *Hen.* III.

FORNAGIUM, or *furnagium*, Fr. *fournage, furnage*.] The fee taken by a lord of his tenant, bound to bake in the lord's common oven, (*in furno domini*), or for a permission to use their own. This was usual in the northern parts of *England*. *Plac. Parl.* 18 *Edw.* I. And see *assisa panis et cervisie*, 51 *Hen.* III.

FORNICATION, *fornication*; from the *fornices* in *Rome*, where lewd women prostituted themselves for money.] Whoredom, or the act of incontinency in single persons; for if either party is married, it is *adultery*. The stat. 1 *Hen.* VII. *c.* 4. mentions this crime; which by an act made *anno* 1650, *c.* 10. during the times of the *Usurpation*, was punished with three months' imprisonment for the first offence, and the second offence was made felony without clergy. Adultery was made felony without clergy in both parties on the first offence. *Scobel's Collect.* 121. The *spiritual court* hath cognisance of this offence; but by stat. 27 *Geo.* III. *c.* 44. the suit must be instituted within eight months, and not at all after the intermarriage of the parties offending; and formerly *courts-leet* had power to inquire of and punish *fornication* and *adultery*; in which courts the king had a fine assessed on the offenders, as appears by the book of *Domesday*. 2 *Inst.* 488.

FORPRISE, *forprisum*.] An exception or reservation. This word is frequently inserted in leases and conveyances, wherein *excepted* and *forprised* is a usual expression: in another signification, it is taken for any exaction, according to *Thorn.* *anno* 1285.

FORSES, catatuda.] Water-falls, so called in *Westmorland. Camd. Britan.*

FORSPEAKER, An attorney or advocate in a cause. *Blount. Scotch Dict.*

FORTALICE, A fortress or place of strength, which anciently did not pass without especial grant. *Scotch Dict.* See also *stat. Hen. VII. c. 18.*

FORTHCOMING, *Action of,* in the *Scotch law,* is an action in the nature of a foreign attachment. See *Attachment.*

FORTIA, Power, dominion, or jurisdiction; whence, *infortiare placitum,* to enforce a plea by judges assembled. *Leg. Hen. I. c. 29.*

FORTIORI, à *fortiori* or *multo fortiori,* is an argument often used by *Littleton,* to this purpose: if it be so in a feoffment passing a new right, *much more* is it for the restitution of an ancient right, &c. *Co. Litt. 253. 260.*

FORTLET, Fr.] A place or fort of some strength; or rather a little fort. *Old Nat. Brev. 45.*

FORTS AND CASTLES. The *stat. 13 Car. II. c. 6.* extends to forts, and other places of strength within the realm; the sole prerogative as well of erecting, as manning and governing of which belongs to the king, in his capacity of general of the kingdom. *2 Inst. 30.*

No subject can build a castle or house of strength embattled, or other fortress defensible without the license of the king; for the danger which might ensue, if every man at his pleasure might do it. *1 Inst. 5. 1 Comm. 263.*

FORTUNA, Treasure-trove.

FORTUNE TELLERS, See *tit. Conjurat.*

FORTUNIUM, A tournament or fighting with spears; or an appeal to *fortune* therein. *Mat. Paris. anno 1241.*

FORTY-DAYS COURT. The court of *attachment* of the forest or *wood-mote.* See *tit. Forest.*

FOSSA, A ditch full of water; wherein women committing felony were drowned; it has been likewise used for a grave, in ancient writings. See *Purca.*

FOSSATUM, FOSSATURA, Lat.] A ditch, or place fenced round with a ditch or trench; also it is taken for the obligations of citizens to repair the city ditches. The work or service done by tenants, &c. for repairing and maintenance of ditches is called *fossatorum operatio;* and the contribution for it *fossagium.* *Kennet's Gloss.*

FOSSEWAY, or the *fosse,* from *fossus, digged.] One of the four ancient *Roman* ways through *England.* See *tit. Watling-street.**

FOSTERLEAN, Saxon.] A nuptial gift; the jointure or stipend for the maintenance of the wife.

FOTHER OR FODDER, from Teuton. *fuder.]* A weight of lead containing eight *higs,* and every *hig* one and twenty stone and a half; so that it is about a ton or common cart load; among the *plumbers* in *London* it is nineteen hundred and a half; and at the *mines* it is two and twenty hundred weight and a half. *Skene.*

FOVEA, A place for burial of the dead. *Stat. Eccl. Paulin. London. MS. 29.*

FOUNDATION, The founding and building of a college or hospital is called *fundatio*, *quasi fundatio*, or *fundamenti locatio*. *Co. lib. 10*. The king only can found a college; but there may be a college in reputation, founded by others. *Dyer*, 267. If it cannot appear by inquisition, who it was that founded a church or college, it shall be intended it was the king, who has power to found a new church, &c. *Moor*, 282. The king may found and erect an *hospitdl*, and give a name to the house, upon the inheritance of another, or license another person to do it upon his own lands, and the words *fundo*, *creo*, &c. are not necessary in every foundation, either of a college or hospital made by the king; but it is sufficient if there be words equivalent. The incorporation of a college or hospital is the very foundation; but he who endows it with land is the *founder*; and to the erection of an hospital nothing more is requisite but the incorporation and foundation. *10 Rep. Case of Sutton's Hosp.*

Persons seized of estates in fee-simple, may erect and found hospitals for the poor, by deed enrolled in chancery, &c. which shall be incorporated and subject to such visitors as the *founder* shall appoint, &c. *Stat. 39 Eliz. c. 5*. Where a corporation is named, it is said the name of the *founder* is parcel of the corporation. *2 Nels. 886*. Though the foundation of a thing may alter the law, as to that particular thing, yet it shall not work a general prejudice. *1 Lill. Abr. 634*. By stat. 7 & 8 *Wm. III. c. 37*. the crown may grant license to alien in *mortmain*. By stat. 9 *Geo. II. c. 36*. gifts in *mortmain* by will, &c. are restrained; but there are exceptions with respect to *universities* and *royal colleges*. See this *Dict. tit. Corporation, University, Mortmain*.

FOUNDER OF METAL, from Fr. *foundre*, to melt or pour.] He that melts metal, and makes any thing of it by pouring or casting it into a mould. See stat. 17 *Rich. 2. c. 1*. this *Dict. tit. Money*. Hence, *bell-founder*, a *fount* of letter, &c.

FOURCHER, Fr. *fourchir*; Lat. *furcare*, because it is two-fold.] A putting off or delaying of an action; and has been compared to stammering, by which the speech is drawn out to a more than ordinary length of time; so a suit is prolonged by *fourching*, which might be brought to a determination in a shorter space. The device is commonly used when an action or suit is brought against two persons, who being jointly concerned, are not to answer till both parties appear, and is where the appearance or *essoin* of one will excuse the other's default, and they agree between themselves that one shall appear or be *essoined* one day, and for want of the other's appearing, have day over to make his appearance with the other party; and at that day allowed the other party doth appear, but he that appeared before doth not, in hopes to have another day by adjournment of the party who then made his appearance. *Terms de Ley*.

This is called *fourcher*; and in the statute of *Westm. 1. (3 Edw. I.) c. 43*. it is termed *fourcher by essoin*; where are words to this effect, *viz.* coparceners, joint-tenants, &c. may not *fourch* by *essoin*, to *essoin* severally; but shall have only one *essoin*, as one sole tenant. And in stat. *Glouc. 6 Edw. I. c. 10*. it is used in like manner: the defendants shall be put to answer without *fourching*, &c.

2 *Inst.* 250. So by stat. 9 *Edw.* III. *st.* 1. *c.* 3. executors are in like manner prevented from *fouching* by *essoin*.

FRACTION. The law makes no *fraction* of a day; if any offence be committed, in case of murder, &c. the year and day shall be computed from the beginning of the day on which the wound was given, &c. and not from the precise minute or hour. See *Co. Litt.* 255. and this *Dict.* tit. *Murder, Appeal*.

An act of record will not admit any division of a day, but is said to be done the first instant of the day. *Mo.* 137.

In presumption of law, when a thing is to be done upon one day, all that day is allowed to do it in, for the avoiding of fractions in time, which the law admits not of, but in case of necessity. *Sti.* 119.

Insurance for *H.*'s life; *H.* died on the last day; *per Holt*, Ch. J. the law makes no fraction in a day; yet, in this case, he dying after the commencement, and before the end of the last day, the insurer is liable, because the insurance is for a year, and the year is not complete till the day be over; yet, if *A.* be born on the 3d day of *September*, and on the 2d day of *September*, twenty-one years afterwards, he makes his will, this is a good will, for the law will make no fraction of a day, and by consequence he was of age. 2 *Salk.* 625. See tit. *Bond, Condition, Infant, &c.*

FRACTITIUM, Arable land. *Mon. Angl. tom.* 2. 873.

FRACTURA NAVIUM, Wreck of shipping at sea.

FRAMPOLE FENCES, Such *fences* as the tenants in the manor of *Writtle*, in *Essex*, set up against the lord's demesnes; and they are entitled to the wood growing on those *fences*, and as many poles as they can reach from the top of the ditch with the helve of an axe, towards the reparation of their *fences*. It is thought the word *frampole* comes from the Sax. *fremful*, profitable; or that it is a corruption of *franchpole*, because the poles are free for the tenants to take: but Chief Justice *Brampton*, whilst he was steward of the court of the manor of *Writtle*, acknowledged that he could not find out the reason why those *fences* were called *frampole*; so that we are at a loss to know the truth of this name etymologically. *Blount*.

FRANCHILANUS, A freeman. *Chart. H.* IV. *Francus homo* is used for a freeman, in *Domesday book*.

FRANCHISE, Fr.] A privilege or exemption from ordinary jurisdiction; as for a corporation to hold pleas to such a value, &c. And sometimes it is an immunity from tribute, when it is either *personal* or *real*, that is, belonging to a person immediately, or by means of this or that place whereof he is a chief or member. *Cromp. Jurisd.* 141.

There is also a *franchise royal*, which seems to be that where the king's writ runs not. 21 *Hen.* VI. *c.* 4. But *franchise royal* is said by some authors to be where the king grants to one and his heirs, that they shall be quit of toll, &c. *Bract. lib.* 2. *c.* 5.

Franchises are a species of incorporeal hereditaments. *Franchise* and *liberty* are used as synonymous terms; and their definition is, "A royal privilege or branch of the king's prerogative, subsisting in the hands of a subject." *Finch's L.* 164. Being therefore derived from the crown, they must arise from the king's grant; or in some cases may be held by prescription, which pre-

supposes a grant. *Finch's L.* 164. The kinds of them are various and almost infinite; they may be vested either in natural persons or in bodies politic; in one man or many: but the same identical franchise that has before been granted to one, cannot be bestowed on another, for that would prejudice the former grant. 2 *Roll. Abr.* 191. *Keilw.* 196.

The *Principality of Wales* is a franchise. To be a *county palatine* is also a franchise, vested in a number of persons. It is likewise a franchise for a number of persons to be incorporated, and subsist as a *body politic*; with a power to maintain perpetual succession, and do corporate acts: and each individual member of such corporation is also said to have a franchise or freedom. Other franchises are, to hold a *court-leet*: to have a *manor* or lordship; or at least to have a lordship paramount: to have *waifs, wrecks, estrays, treasure-trove, royal-fish, forfeitures* and *deadlands*; to have a *court* of one's own, or liberty of holding pleas, and trying causes: to have the *conusance of pleas*, which is a still greater liberty, being an exclusive right, so that no other court shall try causes arising within that jurisdiction: (see this *Dict. tit. cognisance*;) to have a *bailiwick*, or liberty exempt from the sheriff of the county, wherein the grantee only and his officers are to execute all process: to have a *fair* or *market*, with the right of taking *toll*, either there or at any other public places, as at bridges, wharfs or the like; which tolls must have a reasonable cause of commencement, (as in consideration of repairs, or the like,) else the franchise is illegal and void: 2 *Inst.* 220. (See this *Dict. tit. Fair, Toll*;) or, lastly, to have a *forest, chase, park, warren* or *fishery*, endowed with privileges of royalty. *Fitz. N. B.* 230. See this *Dict. tit. Forest, &c.*

Usage may uphold *franchises*, which may be claimed by *prescription*, without record either of creation, allowance or confirmation; and wreck of the sea, waifs, strays, fairs and markets, and the like, are gained by *usage*, and may become due without any matter of record. But goods of felons and outlaws, and such like, grow due by *charter*, and cannot be claimed by usage, &c. 2 *Inst.* 281. 9 *Repr.* 27.

It hath been adjudged that grants of *franchises*, made before the time of memory, ought to have allowance within the time of memory in the *king's bench*; or before the barons of the *exchequer*; or by some confirmation on record; and it is said they are not records pleadable, if they have not the aid of some matter of record within time of memory; and such ancient grants, after such allowance, shall be construed as the law was when they were made, and not as it hath been since altered. But *franchises* granted within time of memory are pleadable without any allowance or confirmation; and if they have been allowed or confirmed as aforesaid, the *franchises* may be claimed by force thereof, without showing the charter. 9 *Repr.* 27, 28. 2 *Inst.* 281. 494.

There have been formerly several ancient prerogatives derived from the crown; besides the *franchises* aforementioned; as power to pardon felony, make justices of assise, and of the peace, &c. But by the stat. 27 *Hen. VIII. c. 24.* they were resumed and reunited to the crown. The king cannot grant power to another to make strangers born, denizens here, because such power is by law inseparably annexed to his person. 7 *Repr.* 25.

By *Magna Carta*, c. 1. and several ancient statutes, the church shall have all her liberties and franchises inviolable: and the lords spiritual and temporal shall enjoy their liberties, &c. and the king may not deprive them of any of them. 14 *Edw. III. st. 2. c. 1.* 2 *Hen. IV. c. 1.*

By *Magna Carta*, c. 37. the franchises and liberties of the city of London, and all other cities, towns, &c. are confirmed. By stat. 27 *Hen. VIII. c. 24.* all writs, processes, &c. in franchises, are to be made in the king's name; and stewards, bailiffs, and other ministers of liberties, shall attend the justices of assise, and make due execution of process, &c.

Some franchises, as *York, Bristol, &c.* have return of writs, to whom mandates are directed from the courts above, to execute writs and process: and a mayor or bailiff of a town, may have liberty to keep courts, and hold pleas in a certain place, according to the course of the common law; and power to draw causes out of the king's courts, by an *exclusive jurisdiction*: but the causes here may be removed to the superior courts. *Co. Litt. 114. 4 Inst. 87. 224.*

Sheriffs of counties, within which is any franchise, the lord whereof is entitled to a return of writs, shall, on his request, appoint one or more deputies, to reside at some place near, there to receive all writs in the sheriff's name, and under his seal to issue warrants for their due execution; and the lord chancellor is to settle the charges to be paid any such deputy, &c. Stat. 13 *Geo. II. c. 18.*

A franchise hath no relation to the county wherein it lies, as has been generally held; for it is not necessary to set forth the county when any thing is shown to be done within a liberty or franchise. *Trin. 23 Car. B. R.*

If a franchise fails to administer justice within the same, the franchise shall not be allowed; but on any such failure, the court of *B. R.* may compel the owners of the franchise, &c. to do justice; for that court ought to see justice equally distributed to all persons. 1 *Lill. Abr. 635.*

Wherever the king is party to a suit, as in all informations and indictments, the process ought to be executed by the sheriff, and not by the bailiff of any franchise, whether it have the clause *non omittas*, &c. or not; for the king's prerogative shall be preferred to any franchise. 2 *Hawk. P. C.* A sheriff upon a *non omittas*, or on a *capias utlagatum* or *quo minus*, may enter and make arrests in a franchise. 1 *Lill. 635.* An arrest by the sheriff within a franchise on a common writ, is said to be good, though the officer be subject to an action at the suit of the lord of the franchise, &c. See tit. *Arrest.*

Franchises may be forfeited and seized where they are abused, for misuser, or nonuser; and when there are many points, a misuser of any one will make a forfeiture of the whole on a *quo warranto* brought. *Kitch. 65.* For contempt of the king's writ, in a county palatine, &c. the liberties may be seized, and the offenders fined; and the temporalities of a bishop have been adjudged to be seized until he satisfied the king for such a contempt, on information exhibited, &c. *Cro. Car. 253.* The bishop of *Durham* pretending he had such a franchise, that the king's writ was not to

come there, and because one brought it thither, he imprisoned him; this being proved upon an information brought against him, it was adjudged he should pay a fine to the king, and lose his liberties. 2 *Shep. Abr.* 250.

If a person claims *franchises* which he ought not to have, it is a usurpation upon the king; and not showing his title, the king shall take from him his *franchise*. *Poph.* 180. 1 *Bulst.* 54. The king's bench will not grant an information on private usurpation of *franchises*, but the proper remedy is to proceed by *quo warranto*. *Hardw.* 261.

If franchises and liberties are granted to the king, which were before *in esse*, as flowers of his crown, and afterwards by escheat, surrender or otherwise, come back to the crown, they are reunited to the crown, and the king has them *in jure coronæ* as before. 9 *Co.* 256. So if liberties, franchises, &c. which were appendant to a manor, come with the manor to the king, the appendancy is extinct, and the king is reseiased of them *in jure coronæ*. 9 *Co.* 25. b. *Cro. Eliz.* 591. 1 *And.* 87. See *Jones*, 286. But if franchises, liberties, &c. created *de novo*, by the king, come back to the crown, they are not merged or extinguished in the crown. 9 *Co.* 25. b. 1 *And.* 87. See *Cro. Eliz.* 592. *Dyer*, 327. a. *Com. Dig.* tit. *Franchise*, (G.)

Disturbance of franchises happens when a man has the franchise of holding a court-leet, of keeping a fair or market, of free warren, of taking toll, of seizing waifs or estrays, or, in short, any other species of franchise whatsoever, and he is disturbed or incommoded in the lawful exercise thereof. As if another by distress, menaces, or persuasions, prevails upon the suitors not to appear at my court; or obstructs the passage to my fair or market; or hunts in my free warren; or refuses to pay me the accustomed toll; or hinders me from seizing the waif or estray, whereby it escapes, or is carried out of my liberty; in all cases of this kind, and which are of a variety too extensive to be here enumerated, an injury is done to the legal owner of the franchise; his property is damnified: and the profits arising from such his franchise, are diminished. To remedy which, as the law has given no other writ, he is therefore entitled to sue for damages by a special action on the case: or in case of toll, may make a distress, if he pleases. 3 *Comm.* 236.

See further as to franchises, under the several titles and names of the different subjects above concisely mentioned; and more at large under title *Quo Warranto*. *Com. Dig.* tit. *Franchises, Liberties*.

FRANCIGENÆ, Was anciently the general appellation of all foreigners. *Vide Englecery*.

FRANCLAINE, Used in ancient authors to denote a freeman or a gentleman. *Fortescue*.

FRANK, A French gold coin, worth twenty *sols*, which is a *livre* about ten pence 1-2d. *English money*.

FRANKALMOIGN, *libera eleemosyna*.] A tenure by spiritual service, where an ecclesiastical corporation, sole or aggregate, holdeth land to them and their successors, of some lord and his heirs in free and perpetual alms: and *perpetual* supposes it to be a fee-simple; though it may pass without the word *successors*. *Litt.* § 133. *Co. Litt.* 94. A lay person cannot hold in *free alms*:

and when a grant is in *frankalmoign*, no mention is to be made of any manner of service. *Litt.* 137. None can hold in *frankalmoign* but by prescription, or by force of some grant made before the statute of *mortmain*. 7 *Edw. I. st.* 2. 18 *Edw. I. st.* 1. c. 3. So that the tenure cannot at this day be created, to hold of a founder and his heirs in free alms: but the king is not restrained by the statutes; nor a subject licensed or dispensed with by the king to make such a grant, &c. *Co. Litt.* 98, 99. And if an ecclesiastical person holds lands by fealty and certain rent, the lord may at this time confirm his estate, to hold to him and his successors in *frankalmoign*; for the former services are extinct, and nothing is reserved but that he should hold of him, which he did before; whereby this change and alteration is not within the stat. 18 *Edw. I. quia emptores terrarum.* *Litt.* § 140. 540. *Co. Litt.* 99. 306.

Tenure in *frankalmoign* is incident to the inheritable blood of the donor or founder; except in case of the king, who may grant this tenure to hold of him and his successors. *Litt.* 135. And the reason why a grant in *frankalmoign*, since the stat. 18 *Edw. I. (quia emptores)* is void, except in the case of the king, &c. is because none can hold land by this tenure, but of the donor; whereas the statute enjoins, that it be held of the chief lord, by the same service by which the feoffor held it; though the king may grant away any estate, and reserve the tenure to himself. *Co. Litt.* 99. 223.

The service which ecclesiastical corporations were bound to render for lands held in *frankalmoign* was not certainly defined, but only in general, to pray for the souls of the donor and his heirs, dead or alive; and therefore they did no fealty, (which is incident to all other services but this,) because this divine service was of a higher and more exalted nature. *Litt.* 134, 135.

This is the tenure by which almost all the ancient monasteries and religious houses held their lands; and by which the parochial clergy and very many ecclesiastical and eleemosynary foundations hold them to this day. The nature of the service being, upon the reformation, altered and made conformable to the doctrines of the church of *England*. It was an old *Saxon* tenure, and continued under the *Norman* revolution; from the respect then shown to religion and religious men: which is also the reason that tenants in *frankalmoign* were discharged of all other services, except the *trinoda necessitas* of repairing the highways, building castles, and repelling invasions. See *Bract. lib.* 4. *tr.* 1. c. 28. § 1. *Seld.* *Jan.* 1. 42.

Even at present, this is a tenure of a nature very distinct from all others, being not in the least feudal, but merely spiritual. For this reason, if any person that holds lands or tenements in *frankalmoign*, make any failure in doing such divine service as they ought, the lord may make complaint of it to the ordinary or visitor; which is the king, if he be founder; or a subject where he was appointed visitor upon the foundation; and the ordinary, &c. may punish the negligence, according to the ecclesiastical laws. *Litt.* 136. *Co. Litt.* 96.

In this particular, tenure in *frankalmoign* materially differs from what was called tenure by *divine service*: in which tenants were obliged to do some special divine services in certain: as to sing so many masses, to distribute such a sum in alms, and the

like; which being expressly defined and prescribed, could with no kind of propriety be called free *alms*; especially as for this, if unperformed, the lord might distrain without any complaint to the visitor. *Litt.* § 137. *Britt.* c. 66.

These donations in *frankalmoign* are now out of use, as none but the king can make them; but they are expressly excepted by name, in the stat. 12 *Car.* II. c. 24. (§ 7.) abolishing tenures, and therefore subsist in many instances at the present day. 2 *Comm.* 101. c. 6.

See further on this subject, this *Dict.* tit. *Mortmain*.

FRANK-CHASE, A liberty of *free chase*; by which all persons that have lands within the compass thereof, are prohibited to cut down any wood, &c. without the view of the forester, though it be in their own demesnes. *Cromp. Juris.* 187.

FRANKED-LETTERS, See tit. *Post, Parliament*.

FRANK-FEE, Freehold lands which are held exempted from all services, but not from homage. In the *register* of writs we find that is *frank-fee*, which a man holds at the common law, to him and his heirs; and not by such service, as is required in ancient demesne, according to the custom of the manor; and that the lands in the hands of King *Edward the Confessor*, at the making of the book of *domesday*, were ancient demesne, and all the rest *frank-fee*; wherewith *Fitzherbert* agrees. *Reg. Orig.* 12. *Fitz. N. B.* 161. These lands were exempted from all services, but not from homage. *Bro. tit. Demesne*, 32. says, that land which is in the hands of the king or lord of any manor, or being ancient demesne of the crown, (*viz.* the demesnes,) is called *frank-fee*; and that which is in the hands of the tenant, is ancient demesne only. The author of the *Terms of the Law* defines a *free fee* to be a tenure pleadable at the common law; and not in ancient demesne. *Cowel. Blount.* See tit. *Ancient Demesne*.

FRANK-FERM, Lands or tenements, changed in the nature of the fee by feoffment, &c. out of knight-service, for certain yearly services. *Britton*, c. 66. See tit. *Fee-farm*.

FRANK-FOLD, See *Foldage*.

FRANK-LAW, *libera lex*.] The benefit of the free and common law of the land. You may find what it is by the contrary, from *Crompton* in his *Justice of Peace*; where he says, he that for any offence loseth his *frank-law*, falls into these mischiefs, *viz.* He may never be empannelled upon any jury or assise; or be permitted to give any testimony: If he hath any thing to do in the king's courts, he must not attend them in person, but appoint his attorney therein for him: And his lands shall be estreated, and his body committed to prison, &c. *Cromp. Juris.* 156. *Lib. Assis.* 59.

FRANK-MARRIAGE, *liberum maritagium*.] A tenure in tail special where a man seised of land in fee-simple, gives it to another with his daughter, sister, &c. in marriage; to hold to them and their heirs: This tenure groweth from these words in the gift, *i. e. Sciant, &c. me A. B. dedisse, et concessisse, &c. T. B. filio meo, et Annæ uxori ejus, filia, &c. in liberum maritagium, unum messuagium, &c.* *Litt.* § 17. *West. Symb. par.* 1. lib. 2. § 303. The effect of which words is, that they shall have the land to them and the heirs of their bodies; and shall do no services to the donor, except fealty, until the fourth degree. *Glanville*, lib. 7.

c. 18. And *Fleta* gives this reason why the heirs do no service until the fourth degree: *Ne donatores vel eorum heredes per homagii receptionem à reversione repellantur*. And why in the fourth descent and downward, they shall do services to the donor; *quia in quarto gradu vehementer prasumitur, quod terra est pro defectu heredum donatorum reversura*. *Fleta*, lib. 3. c. 11. and see *Bracton*, lib. 2. c. 7.

Bracton also divides marriage into *liberum maritagium* and *maritagium servitio obligatum*; which last was where lands were given in marriage, with a reservation of the services to the donor, which the donee and his heirs were bound to perform for ever; but neither he, or the next two heirs, were obliged to do homage, which was to be done when it came to the fourth degree, and then, and not before, they were required to be performed both services and homage. *Bract. lib. 2.* A gift of lands by one man to another with a wife in *frank-marriage*, amounts by implication of law to a gift in tail; which in this case may be created without the words *heirs* or *body*. *Litt. 17. Wood's Inst. 120.* A gift in *frank-marriage* might be made as well after as before marriage: And such a gift was a fee-simple before the statute of *Westm. 2.* but since, it is usually a fee-tail. Though this tenure is now grown out of use it is still capable of subsisting in law: it is liable to no service but fealty. See tit. *Tail, Fee-tail.*

FRANK PLEDGE, *franci flegium*, from Fr. *franc*, liber, and *pledge* fidejussor.] A *pledge* or surety for the behaviour of *free-men*; it being the ancient custom of this kingdom, borrowed from the *Lombards*, that for the preservation of the public peace, every free-born man at the age of fourteen, (religious persons, clerks, &c. excepted,) should give security for his truth towards the king and his subjects, or be committed to prison, whereupon a certain number of neighbours usually became bound one for another, to see each man of their *pledge* forth coming at all times, or to answer the transgression done by any gone away: And whenever any one offended, it was forthwith inquired in what *pledge* he was, and then those of that *pledge* either produced the offender within one and thirty days, or satisfied for his offence. This was called *frank pledge*; and this custom was so kept, that the sheriffs at every county court, did from time to time take the oaths of young persons as they grew to fourteen years of age, and see that they were settled in one *decennary* or other; whereby this branch of the sheriff's authority was called *visus franci flegii*, or *view of frank pledge*. At this day no man ordinarily giveth other security for the keeping of the peace, than his own oath; so that none answereth for the transgression of another, but every person for himself. 4 *Inst. 78.* Living under *frank pledge* has been termed living under law, &c. See this *Dict. tit. Court-lect, Decennary, Dectner.*

FRANK TENEMENT, A possession of *freehold* lands and tenements See *Freehold.*

FRASSETUM, A corruption of *fraxinetum*.] A wood or woody ground, where *ash trees* grow. *Co. Litt. 4.*

FRATER CONSANGUINEUS, A brother by the father's side.

FRATER NUTRICIUS, Used in ancient deeds for a bastard brother. *Malmob.*

FRATER UTERINUS, A brother by the mother's side.

FRATERIA, A fraternity, brotherhood or society of religious persons, who were bound to pray for the good health and life, &c. of their living brethren, and the souls of those that were dead: in the statutes of the cathedral church of *St. Paul* in London, collected by *Ralph Baldock*, Dean, *A. D.* 1295, there is one chapter *de frateria beneficiorum ecclesie S. Pauli, &c.*

FRATERNITIES, See tit. *Corporation*.

FRATRES CONJURATI, Sworn brothers or companions: sometimes those were so called who were sworn to defend the king against his enemies. *Hoveden, p.* 445. *Leg. Wm. I. Leg. Edw. I. c.* 35.

FRATRES PYES, *pied friars.*] Certain friars wearing black and white garments: of whom mention is made by *Walsingham, p.* 124.

FRATRIAGIUM, A younger brother's inheritance; whatever the sons or brothers possess of the estate of the father, they enjoy it *ratione fratriagii*, and are to do homage to the elder brother for it, who is bound to do homage for the whole to the superior lord. *Bract. lib.* 2. *c.* 35.

FRAUD, *fraus*, Lat.] Deceit in grants and conveyances of lands, and bargains and sales of goods, &c. to the damage of another person; which may be either by suppression of the truth, or suggestion of a falsehood. On this subject of **FRAUD**, we may inquire,

I. *What Acts are fraudulent at Common law, and in Equity.*

II. *What Acts are fraudulent by Statute.*

I. It may be laid down as a general rule, that, without the express provision of any act of parliament, all deceitful practices in defrauding, or endeavouring to defraud, another of his known right, by means of some artful device, contrary to the plain rules of common honesty, are condemned by the common law, and punishable according to the heinousness of the offence. *Co. Litt.* 3. b. *Dyer*, 295. Such as causing an illiterate person to execute a deed to his prejudice, by reading of it over to him in words different from those in which it was written, &c. 1 *Sid.* 312. 431.

Also it is a rule, that a wrongful manner of executing a thing shall avoid a matter that might have been executed lawfully. *Co. Litt.* 35. 41 *Ass.* 28. 47 *Ass.* 29. 1 *Roll. Abr.* 420. 549. *Co. Litt.* 357. *Poph.* 64. 100.

A deed not fraudulent at first may become so afterwards. And if one add a seal to a note which is good without it, he shall lose his security. 2 *Vern.* 123. 162.

As to frauds in contracts and dealings, the common law subjects the wrongdoer, in several instances, to an action on the case; as if a person, having the possession of goods, sell them to another, affirming them to be his own, when in truth they are not, an action on the case lies. 1 *Roll. Abr.* 90. *Cro. Jac.* 474. But if *A.* possessed of a term for years, offers to sell it to *B.* and says, that a stranger would have given him twenty pounds for this term, by

which means *B.* buys it, though in truth *A.* was never offered twenty pounds, no action on the case lies, though *B.* is hereby deceived in the value. 1 *Roll. Abr.* 91. 101. 1 *Sid.* 146. *Yelv.* 20. *S. P.*

If on a treaty for the purchase of a house, the defendant affirms the rent to be more than it is, whereby the plaintiff is induced to give more than the house is worth, this is a fraud. 1 *Salk.* 211. 1 *Lcv.* 102. 1 *Sid.* 146. 1 *Keb.* 510. 518. 522. *S. P.* And see *Kel.* 24. 81. 1 *Show.* 50, 51.

Where a person is party to a fraud, all that follows by reason of that *fraud* shall be said to be done by him. *Cro. Jac.* 469. But when *fraud* is not expressly averred, it shall not be presumed; nor shall the court adjudge it to be so, till the matter is found by a jury. 10 *Rep.* 56.

All frauds and deceits, for which there is no remedy by the ordinary course of law, are properly cognisable in equity: and it is admitted, that matters of fraud were one of the chief branches to which the jurisdiction of chancery was originally confided. 4 *Inst.* 84. It would be endless to enumerate the several cases, wherein relief has been given against frauds: but the following instances are too material to be omitted.

Wherever fraud or surprise can be imputed to, or collected from the circumstances of the transaction, equity will interpose and relieve against it. *Toth.* 101, 102. 2 *Ch. Ca.* 103. *Finch.* 161. 2 *P. Wms.* 203. 270. 3 *P. Wms.* 130. 2 *Vern.* 189. 2 *Atk.* 324. 2 *Veaz.* 407. It is said, however, that it must not be understood, from cases of this kind being generally brought into equity, that the courts of law are incompetent to relieve; for where the fraud can be clearly established, courts of law exercise a concurrent jurisdiction with courts of equity; and will relieve by making void the instrument obtained by such corrupt agreement or fraud. 1 *Burr.* 396. *Wood's Inst.* 296. Therefore where the obligor was an unlettered man, and the bond was not read over to him, he was allowed to plead this circumstance in an action on the bond. 9 *Hen. V.* 15. cited 11 *Co.* 27. b. So if the bond be in part read to an unlettered man, and some of its material contents be omitted or misrepresented. 2 *Roll. Abr.* 28. *f.* 8. It is observable that Lord *Coke* in the same passage where he confines the jurisdiction of courts of equity to such "frauds, covin and deceit, for which there is no remedy by the ordinary course of law," seems to admit that all frauds were not relievable at law. See 3 *Inst.* 84.

The chancery may decree a conveyance to be *fraudulent* merely for being voluntary, and without any trial at law; yet it has been insisted, that *fraud* or not, was triable only by a jury. *Pre. Ch.* 14, 15.

A poor man was drawn in to sell an estate, at a great under-value; but no *fraud* appearing, though the purchase was not a fair bargain, the seller could not be relieved in equity, to set it aside. *Pre. Ch.* 206.

There does not appear to be a single case in the books in which it has been held that mere inadequacy of price alone is a ground for a court of equity to annul an agreement, though executory, if the same appear to have been fairly entered into, and understood by the parties, and capable of being specifically performed; still

less does it appear to have been considered as a ground for rescinding an agreement actually executed. See *Gilb. Rep.* 155. *Bro. P. C. Keen v Stukeley.* 2 *Atk.* 251. *Ambl.* 18. To set aside a conveyance there must be an inequality of price so strong, gross and manifest, that it must be impossible to state it to a man of common sense, without producing an exclamation at the inequality of it. 1 *Bro. C. R.* 9. and see 2 *Bro. C. R.* 179. in *n.* A strong argument in support of this rule may be drawn from those cases in which losing bargains have been actually established and decreed. See 2 *Vern.* 423. 1 *Eq. Abr.* 170. 2 *Vez.* 422. 1 *Bro. C. R.* 158. But though courts of equity will not relieve against agreements, merely on the ground of the consideration being inadequate, yet if there be such inadequacy as to show that the person did not understand the bargain he made, or was so oppressed that he was glad to make it, knowing its inadequacy, it will show a command over him which may amount to a fraud. 2 *Bro. C. R.* 175. See also 1 *Bro. C. R.* 558. *Herne v. Meers.* 2 *Vez.* 155. 2 *P. Wms.* 203.

A. being tenant in tail, remainder to his brother *B.* in tail, *A.* not knowing of the entail, makes a settlement on his wife for life for her jointure, without levying a fine, or suffering a recovery, which *B.* who knew of the entail engrosses, but does not mention any thing of the entail, because, as he confessed in his answer, if he had spoke any thing of it, his brother, by a recovery, might have cut off the remainder, and barred him; and although after *A.*'s death, *B.* recovered in ejectment against the widow by force of the entail; yet she was relieved in chancery, and a perpetual injunction granted for this fraud in *B.* in concealing the entail; which if it had been disclosed, the settlement might have been made good by a recovery. *Pre. Ch.* 35. 2 *Vern.* 239.

So where a mother being absolute owner of a term, the same being limited to her in tail, is present at a treaty for her son's marriage, and hears her son declare, that the term was to come to him at his mother's death, and is a witness to the deed, whereby the reversion of the term is settled on the issue of the marriage after the mother's death; she was compelled in equity to make good the settlement. 2 *Vern.* 150.

Where the defendant, on a treaty of marriage for his daughter with the plaintiff, signed a writing comprising the terms of the agreement, and afterwards desiring to elude the force thereof, and get loose from his agreement, ordered his daughter to put on a good humour, and get the plaintiff to deliver up that writing, and then marry him, which she accordingly did, and the defendant stood by at the corner of the street to see them go to be married; the plaintiff was relieved on the point of fraud. 1 *Eq. Abr.* 20. 2 *Vern.* 373.

It seems agreed that if a woman on the point of marriage, charge, or convey her property to a mere stranger, for whom she was not under even a moral obligation to provide, that such conveyance will be decreed a fraud on the marital rights. 2 *C. R.* 41. 2 *Vez.* 264.

If *A.* has a prior encumbrance on an estate, and is a witness to a subsequent mortgage, but does not disclose his own encumbrance; this is such a fraud in him for which his encumbrance shall be

postponed. 2 Vern. 151. And see 2 Vern. 554. So if A. having a mortgage on a leasehold estate lends the mortgage deed to the mortgagor, with an intent to borrow more money; that is such a fraud in the mortgagee, for which his mortgage shall be postponed to the subsequent encumbrance. 2 Vern. 726. 1 Eq. Abr. 321. See this *Dict.* tit. *Mortgage*.

If a copyholder, by his will, intending to give the greatest part of his estate to his godson, and the other part to his wife, is persuaded by the wife to nominate her to the whole, on a promise that she would give the godson the part designed for him; it will be decreed against the wife on the point of fraud, though there was no memorandum thereof in writing pursuant to the statute of frauds and perjuries *Pre. Ch. 3*.

Since the cases of *Kerrick v. Bransby*, (*Bro. P. C.*) and *Webb v. Cleverden*, (2 *Atk.* 424.) it appears to have been settled that a will cannot be set aside in equity for fraud and imposition; because a will of personal estate may be set aside for fraud in the ecclesiastical court, and a will of real estate may be set aside at law: for in such cases, as the *animus testandi* is wanting, it cannot be considered as a will. 2 *Atk.* 324. 3 *Atk.* 17. Though equity will not set aside a will for fraud, nor restrain the probate of it in the proper court, yet if the fraud be proved, it will not assist the party practising it, but will leave him to make what advantage he can of it. 2 Vern. 76. But if the validity of the will has been already determined and acted upon, equity will restrain proceedings in the prerogative court, to controvert its validity. 1 *Atk.* 628. That the party prejudiced by the fraud may file a bill in equity for a discovery of all its circumstances is unquestionable: the invariable practice in such cases is to seek relief, and the issue directed is to furnish the ground upon which the court is to proceed in giving relief. *Fonblanque's Treat. Eq. c. 2. § 3. in n.*

If a security be obtained from a person by fraud and practice, upon a pretence of a demand that is fictitious, it will be relieved against in equity. 2 Vern. 123. 632.

There are likewise several instances, where a parol agreement intended to be reduced into writing, but prevented by fraud, has been decreed in equity, notwithstanding the statute of frauds and perjuries; as where, upon a marriage treaty, instructions were given by the husband to draw a settlement, which he privately countermanded, and afterwards drew in the woman by persuasions and assurances of such settlement to marry him; it was decreed, that he should make good the settlement. 1 *Eq. Ab.* 19. So where a parol agreement was concerning the lending of money on mortgage, and the covenants proposed were an absolute deed from the mortgagor, and a deed of defeasance from the mortgagee, and after the mortgagee had got the deed of conveyance, he refused to execute the defeasance; it was decreed against him on the point of fraud. 1 *Eq. Ab.* 90. See title *agreement*.

II. By *st. 1 Rich. II. c. 9.* no gift or feoffment of lands or goods shall be made by fraud or maintenance. And the disseisees shall have their recovery against the first disseisors as well of their lands as of double damages, without regard to such alienations. See also

stat. 4 *Hen.* IV. c. 7, 11 *Hen.* VI. c. 3. and this *Dict.* titles *Disseisin, Forcible Entry.*

By stats. 3 *Hen.* VII. c. 4. (and see stat. 50 *Edw.* III. c. 6.) all deeds of gift of goods made in trust for the use of persons making the said gifts, with intent to defraud creditors, shall be null and void.

By stat. 13 *Eliz.* c. 5. (made perpetual by stat. 29 *Eliz.* c. 5.) every feoffment, gift, alienation and conveyance of lands or goods, leases, rents, &c. and every bond, judgment and execution with intent to defraud creditors or others, shall (only against creditors and others whose actions shall be thereby defrauded or delayed) be of none effect; all parties and privies to such conveyances, bonds, &c. shall forfeit one year's value of the lands; and the whole of the goods, or money contained in the bond, &c. half to the crown and half to the party grieved; and suffer half a year's imprisonment. This statute not to extend to any estate made on good considerations *bonâ fide* to persons not having notice of such fraud.

By stat. 27 *Eliz.* c. 4. (made perpetual by stat. 39 *Eliz.* c. 18.) Every conveyance, charge, lease or encumbrance of any lands made with intent to defraud purchasers shall be deemed utterly void as against such purchasers and all claiming under them. The parties and privies to such conveyances shall forfeit one year's value of the land and suffer half a year's imprisonment. The statute expressly excepts any conveyance made for good consideration and *bonâ fide*. If any person shall make any conveyance or limitation of lands with a clause of revocation, and after such conveyance shall convey or charge the same lands for money or other good consideration, the said first conveyance against the said vendees shall be void. Lawful mortgages made *bonâ fide* on good consideration are excepted. By the same act *statutes-merchant* and *statutes-staple* are to be entered in the office of the clerk of the recognisances. See this *Dict.* those titles.

By stat. 29 *Car.* II. c. 3. (known more commonly by the name of *the statute of frauds*, and by which various provisions are made as to *contracts, wills, &c.* which see in this *Dict.* under titles *Agreements, Assumpsit, Wills, &c.*) all leases, estates of freehold, or terms for years, or any uncertain interest in lands, made by livery and seisin only, or by parol, and not put in writing, and signed by the parties or their agents, shall have the force of leases at will only. Except leases not exceeding the term of three years at two thirds of the improved value. And no leases, estates, or interests of lands, either of freehold or terms of years, or any uncertain interest, not being copyhold, shall be assigned, granted or surrendered, unless by deed or note in writing signed by the parties or their agents, or by the operation of law.

By stat. 3. (or 3 & 4) *W. & M.* c. 14. made perpetual by stat. 6 *Wm.* III. c. 14. all wills or appointments of lands, or of any rent, &c. out of the same, shall be deemed, only as against *creditors* by bond or specialty binding the heir, to be fraudulent and void. And every such creditor shall have his action of debt upon his bonds and specialties against the heir at law of such obligors, and such devisees jointly. This statute, however, excepts dispositions for the payment of debts, and raising portions for children in pursuance of marriage contracts made before marriage: it further provides, that where any heir at law shall be liable to pay

his ancestor's debt, in respect of lands descended to such heir, and shall alien the same before action brought, such heir shall be answerable to the creditor in an action of debt to the value of the land aliened; but the lands *bonâ fide* aliened before action brought shall not be liable. Every devisee, however, made liable by the statute, shall be chargeable in the same manner as the heir, though the lands devised shall be aliened before action brought.

The stats. 50 *Edw.* III. c. 6. 3 *Hen.* VII. c. 4. expressly declare all gifts, &c. of goods and chattels intended to defraud creditors, to be null and void: creditors might however still in some cases be defrauded, by their debtors' executing powers of appointment (vested in them by settlement, &c.) in favour of mere volunteers, unless courts of equity interposed, and made such voluntary appointment in the first place subject to payment of debts. 2 *Vern.* 319. 465. 2 *Vez.* 1. But though courts of equity will subject a voluntary appointment to payment of debts, yet they will not interfere where the debtor has not executed his power of appointment. 2 *Vern.* 465. 2 *Vez.* 1. See also *Hob.* 9. as to the rule of law.

As the stat. 13 *Eliz.* c. 5. not only declares all deeds made in fraud of creditors to be null and void, but subjects the parties to such fraud, to the penalties and forfeitures above mentioned, it should seem that the provisions of this act ought to be construed strictly; but Lord *Mansfield* has said, that the stats. 13 *Eliz.* c. 5. 27 *Eliz.* c. 4. cannot receive too liberal a construction, or be too much extended in suppression of fraud. *Cowp.* 434.

The object of the legislature was evidently to protect creditors from those frauds which are frequently practised by debtors under the pretence of discharging a moral obligation; for as to those gifts or conveyances which want even a good or meritorious consideration for their support, their being voluntary seems to have been always a sufficient ground to conclude that they were fraudulent; but though the statute protects the legal right of creditors against the fraud of their debtors, it anxiously excepts from such imputation the *bonâ fide* discharge of a moral duty. It therefore does not declare all *voluntary* conveyances, but all *fraudulent* conveyances to be void; and whether the conveyance be fraudulent or not is declared to depend on the consideration being good, and also *bonâ fide*. 1 *Ch. Cas.* 99. 291. 1 *Vent.* 194. 1 *Mod.* 119. 1 *Atk.* 15. *Cowp.* 708.

A good consideration is that of blood, or of natural love and affection. See this *Dict. tit. Consideration*. A gift made for such consideration ought certainly to prevail, unless it be found to break in upon the legal rights of others; in that case it is equally clear it ought to be set aside. If therefore a man being indebted, convey to the use of his wife or children, such conveyance would be within the statute; for though the consideration be good, yet it is not *bonâ fide*; that is, the circumstances of the grantor render it inconsistent with that good faith which is due to his creditors. *Fonblanque's Treat. Eq. c. 4. § 12. in notes.*

If there be a voluntary conveyance of real estate, or chattel interest, by one not indebted at the time, though he afterwards becomes indebted, if that voluntary conveyance was for a child, and there is no particular evidence or badge of fraud to deceive sub-

sequent creditors, that will be good; but if any mark of fraud, collusion, or intent to deceive subsequent creditors appear, that will make it void. 2 *Vez.* 11. See also 2 *Atk.* 481. 1 *Atk.* 13. *Cowp.* 711.

But the grantor's being indebted is not the only badge of fraud; several other circumstances are enumerated in *Twyne's* case, (3 *Rep.*) as furnishing a strong presumption that the transaction is *malâ fide*. Gifts made in secret are liable to suspicion of fraud; a general gift of all a man's goods may be reasonably suspected to be *fraudulent*, even though there be a true debt owing to the party to whom made. The several marks or badges of fraud, in a gift or grant of goods are, if it be general, without exception of some things of necessity; if the donor still possesses and uses the goods; if the deed be secretly made; if there be a trust between the parties; or if it be made pending the action. 3 *Rep.* 80—82. If also the conveyance contain a power of revocation, or a power to mortgage, it will be considered as fraudulent against creditors. 2 *Vern.* 510. So if the grantor be allowed to continue in possession of lands, the conveyance being absolute. 2 *Bulst.* 218. So if the conveyance or gift be in general of the whole or the greater part of the grantor's property, such conveyance or gift would be presumed to be fraudulent; for no man can voluntarily divest himself of all, or the most of what he has, without being aware that future creditors will probably suffer for it. In short, if the transaction be chargeable with any circumstance sufficiently strong to raise a presumption of its being a fraud, it cannot be supported, unless some other consideration be interposed to obviate the objection arising from the general nature of the transaction; as where the husband after marriage being indebted conveyed an estate to trustees, to the separate use of his wife; it was held that the trustees having undertaken to indemnify him against his wife's debts, was sufficient to support the settlement as a valuable consideration. 2 *Bro. C. R.* 90. But if this transaction had been with a view to defraud creditors, it would probably have been set aside; for if the transaction be not *bonâ fide*, the circumstance of its being even for a valuable consideration will not alone take it out of the statute. *Cowp.* 434. 2 *Atk.* 477.

But though creditors may under the above and other circumstances avoid a voluntary conveyance, yet it is binding on the party making it and all claiming under him. *Cro. Jac.* 270. 1 *Eq. Abr.* 168. 22 *Vin. Abr.* 16—18. 1 *Vern.* 100. 132 464. 2 *Vern.* 475. 22 *Vin. Abr.* 24. *pl.* 3. And if there be two or more voluntary conveyances, the first shall prevail, unless the latter be for payment of debts. 1 *Ch. Rep.* 92. 2 *Ch. Rep.* 199.

A conveyance, if made of lands by *fraud*, is not void by the stat. 13 *Eliz. c.* 5. against all persons, but only against those who afterwards come to the land upon valuable consideration. *Cro. Eliz.* 445. *Cro. Jac.* 271.

A distinction has been taken between the claims of real creditors, and a debt founded in *malâ ficio*; for *A.* having brought an action against *B.* for criminal conversation with *A.'s* wife, *B.* assigned his estates to trustees in trust to pay the several debts mentioned in a schedule, and such other debts as he should name. *A.* recovered 5,000*l.* damages, and brought his bill to set aside this

deed as fraudulent, but the court held that it was not fraudulent either in law or equity; for the plaintiff was no creditor at the time of making the deed; and though it were made with an intent to prefer his real creditors before this debt when it should come to be due, yet it was conscientious so to do. But the plaintiff was held to have an interest in the surplus after payment of the other debts. *Pre. Ch.* 105.

On the construction of the stat. 27 *Eliz.* c. 4. it has been held that every voluntary conveyance shall be presumed to be fraudulent against a subsequent purchaser. 1 *Vent.* 194. 1 *Ch. Ca.* 100. 217. *Cro. Jac.* 158. But if the conveyance, though voluntary, appear to have been made for a meritorious consideration, and without fraud or covin, it shall not be void against a subsequent purchaser; for there is no part of the act which affects voluntary settlements *eo nomine* unless they are fraudulent. *Doe v. Routledge, Cowp.* 708. See also, 2 *Wils.* 356. *Forrest.* 64. 2 *Vern.* 44. As to what shall be deemed a meritorious consideration, see the above cases, and also, 1 *Vern.* 408. 467. 1 *Atk.* 265. And though a conveyance be covinous in its creation, it may acquire validity by subsequent matter, as where the land conveyed is afterwards aliened or settled for valuable consideration. 1 *Sid.* 133, 134. *Skin.* 423. 3 *Lev.* 387. It has also been held that a purchaser, to avail himself of this act, must be a purchaser for money or other valuable consideration. 3 *Co.* 83. a. *Cro. Eliz.* 444. See also, *Com. Dig. Fraud*, 4 I. 2. 1 *Eq. Abr.* 353.

Gooch's case (5 *Co.* 60. b.) determines that a purchaser shall avoid a fraudulent conveyance, notwithstanding his notice of the fraud, but this can by no means bear out the inference that all voluntary conveyances are fraudulent, and therefore absolutely void, though the purchaser have notice of them. The terms of stat. 27 *Eliz.* c. 4. § 2. seem to be sufficiently distinct to confine its operation to such conveyances as are made with an intent to defraud and deceive subsequent purchasers; but it were difficult to maintain that a conveyance was made with intent to defraud a person who before he became a purchaser had full notice of such conveyance. See 2 *Lev.* 105. The policy of the act was to prevent fraud; the construction most favourable to such purpose is that which excludes all temptation to the practice of it. A voluntary deed, as has already been noticed, is binding on the party and all claiming under him as subsequent volunteers; and to allow him to defeat his bounty in favour of a purchaser for valuable consideration without notice, is merely to prefer a higher consideration; but to allow a purchaser with notice to supersede the claims of a volunteer, seems to encourage a breach of the respect morally due to the fair claims and interests of others, and may render the provisions of a statute, intended by the legislature to be preventive of fraud, the most effectual instrument of accomplishing it. This point seems deserving of consideration; for if the construction of this act, which has certainly prevailed in favour of purchasers with notice were traced, it would probably appear to have originated in the opinion, that the statute avoids all voluntary conveyances whatever; though, as very strongly observed by Lord Mansfield, in *Doe v. Routledge*, (*Cowp.* 708.) it merely affects fraudulent conveyances. *Fonblanque, Treat. Eq.* c. 4. § 13. in n.

Before the above stat. 3 *W. & M. c.* 14. against *fraudulent devises* bond and other specialty creditors whose debts did not immediately affect the lands of their debtors, were liable to be defrauded, either by their debtor devising his lands, or by the alienation of the heir before any action could be brought against him. To obviate these the statute was made, by the provisions of which the bond-creditor is in some degree protected against the fraud of the debtor or his heir. But the statute having expressly excepted devises for payment of debts or children's portions, bond and other specialty creditors whose demands do in their nature affect the land, are still liable to be prejudiced by the right of their debtor to devise his real estate; for if he devise subject to the payment of debts, his simple contract creditors will be entitled to be paid *parsi passu* with such bond or other specialty creditors; for in conscience their debts are to be equally favoured, being equally due. 1 *Ch. Ca.* 32. 248. 2 *Ch. Ca.* 54. 3 *Ch. Rep.* 7. 1 *Vern.* 63. 101. 2 *Vern.* 61. 763. And even creditors who are barred by the statute of limitations shall be let in. 2 *Vern.* 141. And though it has been held in some cases, that if the estate be devised to the executor for payment of debts, such circumstance will render the estate *legal assets*, yet it seems now to be settled, that this shall not occasion the produce of it, when sold, to be applied as it would in the ecclesiastical court, but the estate must nevertheless be considered as *equitable assets*. *Newton v. Bennet*, 1 *Bro. C. R.* 135. and *Silk v. Prime*, in the note there. But if the estate descends to the heir charged with the payment of debts, it will still be *legal assets*. 1 *P. Wms.* 430. 2 *Atk.* 290. See this *Dict.* tit. *Executor* V. 6. *Assets*.

Fraudulent gifts, or grants of goods to *defraud* the lord of his heriot, shall be void; and the value of the goods forfeited, under stat. 13 *Eliz. c.* 5.

Fraudulent conveyances to multiply votes at *election of knights of the shire*, shall be taken against the persons making them as free and absolute; and all securities for redeeming and restoring, &c. to be void. Stat. 10 *Ann. c.* 23. See tit. *Parliament*.

Gross criminal frauds are punishable by way of indictment or information; such as playing with false dice, causing an illiterate person to execute a deed to his prejudice, &c. for these and such like offences the party may be punished not only with fine and imprisonment, but also with such farther infamous punishment, as the judges in their discretion shall think proper. *Cro. Jac.* 497. 2 *Roll. Abr.* 78. 2 *Roll. Rep.* 107. 1 *Keb.* 849. 6 *Mod.* 42. 1 *Sid.* 312. 431. *Noy*, 99. 103. *Moor*, 630. *Cro. Eliz.* 531. 1 *Mod.* 46. 2 *Jones*, 64. 6 *Mod.* 105. 1 *Salk.* 379. See tit. *Cheats*.

For further matter relative to frauds and fraudulent conveyances, and obtaining relief against them; and as to the operation of the statute of frauds, and other statutes before mentioned, see this *Dict.* tit. *Agreement* III. IV. *Assumpsit*, *Bankrupt*, *Bill of Sale*, *Chancery*, *Contract*, *Conveyance*, *Deeds*, *Equity*, *Execution*, *Judgment*, *Will*, &c.

FRAUDS AND PERJURIES, Statute of, see tit. *Frauds* II.

FRAUNK FERME, See *Frank Ferm*, *Fee-Farm*.

FRAUS LEGIS. If a person having no manner of title to a house, procure an affidavit of the service of a declaration in eject-

ment, and thereupon gets judgment; and by virtue of a writ of *hab. fac. possessionem*, turns the owner out of possession of the house, and seizes and converts the goods therein to his own use, he may be punished as a felon; because he used the process of the law with a felonious purpose, *in fraudem legis*. *Raym.* 276. *Sid.* 254.

FRAXINETUM, A wood of ash trees. *Domesday.*

FRAY, See *Affray*.

FREDUM, A composition anciently made by a criminal, to be freed from prosecution, of which the third part was paid into the *exchequer*. Formerly compositions were paid for crimes in general, particularly for murder. The magistrate was to determine the composition, and protect the offender against the violence of resentment. See *Montesquieu's Spirit of Laws*, l. 30. c. 20. *Robertson's Charles V.* i. 300.

FREDWIT, A liberty to hold courts, and make americiaments, &c. *Cowel.*

FREE BENCH, [*francus bancus; sedes libera.*] That estate in copyhold lands which the wife hath on the death of her husband for her dower, according to the custom of the manor; but it is said the wife ought to be espoused a virgin; and is to hold the land only so long as she lives sole and continent. *Kitch.* 102. Of this *free bench* several manors have several customs; and *Fitzherbert* calls it a *custom*, whereby in certain cities the wife shall have the whole lands of the husband for her dower, &c. *Fitz. N. B.* 150. In the manors of *East and West Embourne* in the county of *Berks*, and the manor of *Torre* in *Devonshire*, and other parts of the *West of England*, there is a custom, that when a copyhold tenant dies, his widow shall have her *free bench* in all his customary lands, *dum sola et casta fuerit*; but if she commits incontinency, she forfeits her estate: yet nevertheless, on her coming into the court of the manor, riding backwards on a *black ram*, with his tail in her hand, and saying the words following, the steward is bound by the custom to readmit her to her *free-bench*; the words are these:

*Here I am,
Riding on a black ram,
Like a whore as I am:
And for my crancum crancum,
I have lost my bincum bancum;
And for my tail's game,
Have done this worldly shame;
Therefore, pray Mr. Steward, let me have my land again.*

Cowel.

FREEBORD, [*francbordus.*] Ground claimed in some places more or less, beyond, or without the fence: it is said to contain two feet and a half. *Mon. Angl. tom. 2. p.* 141.

FREE BOROUGH-MEN, Such great men as did not engage like the *frank-pledge* men for their *decennier*. See *Friburgh*.

FREE CHAPEL, [*libera capella.*] A chapel so called, because it is exempt from the jurisdiction of the diocesan. Those *chapels* are properly *free chapels* which are of the king's foundation, and

by him exempted from the ordinary's visitation; also *chapels* founded within a parish for the service of God, by the devotion and liberality of pious men, over and above the mother church, and endowed with maintenance by the founders, which were *free* for the inhabitants of the parish to come to, were therefore called *free chapels*. *Reg. Orig.* 40, 41. The *free chapel* of *St. Martin-le-Grand* is mentioned in the stat. 3 *Edw.* IV. c. 4. as are others likewise by ancient statutes; but these chapels were given to the king, with the *chanteries*, &c. by stat. 1 *Edw.* VI. c. 14. See tit. *Monasteries*.

FREEHOLD, *liberum tenementum*.] That land or tenement which a man *holds* in fee-simple, fee-tail, or for term of life. *Bract. lib. 2 c. 9*. It is described to be of two sorts: *freehold in deed* and *freehold in law*; the first being the real possession of lands, &c. in fee or for life; the other, the right a person hath to such lands or tenements, before his entry or seizure. *Freehold* is also extended to *offices*, which a man holds either in fee, or during life; and, in the register of writs it is said, that he who holds land upon an execution of a *statute-merchant* until he is satisfied the debt, holds *as freehold* to him and his assigns, and the same of a tenant by *elegit*; but such tenants are not in fact *freeholders*, only *as freeholders* for their time, till they have received the profits of the land to the value of their debt. *Reg. Judic.* 68. 73. A lease for ninety-nine years, &c. determinable upon a life or lives, is not a lease for life to make a *freehold*, but a lease for years, or chattel determinable upon life or lives; and an estate for one thousand years is not a *freehold*, or of so high a nature as an estate for life. *Co. Litt.* 6. He that hath an estate for the term of his own life, or the life of another, hath a *freehold*, and no other of a less estate; though they of a greater estate have a *freehold*, as tenant in fee, &c. *Litt.* 57.

When a man pleads *liberum tenementum* generally, it shall be intended that he hath an estate in fee; and not a bare estate for life. *Cro. Eliz.* 87. An estate of *freehold* cannot by the *common law* commence *in futuro*; but it must take place presently in possession, reversion, or remainder. *5 Rep.* 94.

A man made a deed of gift to his son and his heirs, of lands after his death, and no livery was made; now if there had been *livery*, it had been void, because a *freehold* cannot commence *in futuro*: and it has been held, that it shall not enure as a covenant to stand seised, by reason of the word *give*; by which was intended a transmutation of the estate, and not to pass it by way of use. *March. Rep.* 50, 51. Whatsoever is part of, or fixed to, the *freehold*, goes to the heir; and glass windows, wainscot, &c. affixed to the house, are parcel of the house, and cannot be removed by tenants. *4 Rep.* 63, 64. But it hath been adjudged, that if things necessary for trade, &c. are affixed to the *freehold* by the lessee, he may take them down and remove them, so as he do it before the end of the term, and he do not thereby injure the *freehold*. *1 Salk.* 368. See tit. *Heir*.

Any thing fixed to the *freehold* may not be taken in distress for rent or in execution, &c. It is not felony at *common law*, only trespass, to steal or take any thing annexed to the *freehold*; such as lead on a church, or house, corn or grass growing on the ground, apples on a tree, &c. Though if they are severed from

the *freehold*, whether by the owner or a thief, if he severed them at one time, and took them away at another, it was larceny to take them. 12 *Ass* 32. 1 *Hawk. P. C.* And now by stat. 4 *Geo.* II. c. 32. to steal lead on houses, &c. is made felony.

Magna Carta, c. 29. ordains, "that no person shall be disseised of his *freehold*, &c. but by judgment of his peers, or according to the law of the land;" which does not only relate to common disseisins, but the king may not otherwise seize into his hands the *freehold* of the subject. *Wood's Inst.* 614. None shall distrain any freeholders to answer for their freeholds, or any thing touching the same, without the king's writ. Stat. 52 *Hen.* III. c. 22. Nor shall any person be compelled to answer for his freehold, before any lord of a manor, &c. Stat. 15 *Rich.* II. c. 12. See this *Dict.* tit. *Liberty*. As to the freehold qualifications necessary in certain cases, see this *Dict.* tit. *Parliament, Jury, &c.* and further, for the definition and description of freehold estates, tit. *Estate*.

FREEHOLDERS, Such as hold any freehold estate. By the ancient laws of *Scotland*, freeholders were called *milites*; and freehold, in this kingdom, hath been sometimes taken in opposition to *villenage*, it being lands in the hands of the gentry and better sort of tenants, by certain tenure, who were always freeholders, contrary to what was in the possession of the inferior people held at the will of the lord. *Lambard*.

FREEMAN, *liber homo*.] One distinguished from a slave; that is born or made free; and these have divers privileges beyond others. In the distinction of a freeman from a vassal under the feudal policy, *liber homo* was commonly opposed to *vassus* or *vas-salus*; the former denoting an *allodial* proprietor; the latter, one who held of a superior. See tit. *Tenures*.

The title of a *freeman* is also given to any one, admitted to the freedom of a corporate town, or of any other corporate body, consisting, among other members, of those called *freemen*. See tit. *Corporation, London*.

FREE-MASONS, See *Masons*.

FREE-WARREN, See *Warren*.

FREIGHT, *Fr. fret*.] The money paid for carriage of goods by sea; or in a larger sense, it is taken for the price paid for the use of a ship to transport goods; and for the cargo, or burthen of the ship. Ships are freighted either by the ton, or by the great; and in respect of time, the freight is agreed for, at so much *per* month, or at a certain sum for the whole voyage. If a ship freighted by the great, happens to be cast away, the freight is lost; but if a merchant agrees by the ton, or at so much for every piece of commodities, and by any accident the ship is cast away, if part of the goods is saved, it is said she ought to be answered her freight *pro rata*: and when a ship is *insured* and such a misfortune happens, the insured commonly transfer those goods over to the assurers, towards a satisfaction of what they make good. *Lex Mercat*.

If freight is agreed for the lading and unlading of cattle at such a port, and some die before the ship arrives there, the whole freight shall be paid for the living and the dead; but if the agreement be for *transporting* them, freight shall be only paid for the living: it is the same of slaves. *Ibid.* 85. The lading of a ship in construction of law, is bound for the freight; the freight being

in point of payment preferred before any other debts to which the goods so laden are liable, though such debts as to time were precedent to the freight. *Hil. 27 Car. II. B. R.* If part of the lading be on shipboard, and through some misfortune happening to the merchant he has not his full lading aboard at the time agreed, the master shall have freight by way of damage, for the time those goods were on board; and is at his liberty to contract with another, lest he lose his season and voyage; and where a ship is not ready to take in, or the merchant not ready to lade his goods aboard, the parties are not only so at liberty, but the person damnified may bring an action against the other and recover his damages sustained. *Leg. Rhod.*

If the freighter of a ship shall lade on board prohibited goods, or unlawful merchandise, whereby the ship is detained, or the voyage impeded; he shall answer the freight agreed for. *Sty. 220.* And when goods are laden aboard, and the ship hath broke ground, the merchant may not afterwards unlade them; for if he then changes his mind, and resolves not to venture, but will unlade again, by the marine law the freight becomes due. If a master freights out his ship, and afterwards secretly takes in goods unknown to the first loaders, by the law marine he forfeits his freight; and if a master of a ship shall put into any other port than what the ship was freighted to, he shall answer damages to the merchant; unless he is forced in by storm, enemies, or pirates; and in that case he is obliged to sail to the port agreed, at his own expense. *Leg. Oleron.* A ship is freighted so much out and so much in, there shall be no freight due till the voyage is performed; so that if the ship be cast away, coming home, the freight outwards, as well as inwards, are both gone. *1 Brownl. 21. Mal. 98. and see 2 Ch. Ca. 75. 2 Vern. 212. and also Doug. 541, 542.* that where a ship perishes, the whole freight from the last place or time of payment will be lost. And if no freight be payable till the return, if the ship is lost returning, the freight outwards shall be lost as well as that inwards. *Mal. 98.*

The goods carried, generally, are a security for the freight, and the master is not bound to deliver them without payment. *Doug. 104.*

If a freighted ship becomes disabled without the master's fault, he has his option to refit, (if possible, in convenient time,) or to hire another ship to carry the goods. If the merchant will not agree to this, the master is entitled to the full freight for the whole voyage. *2 Burr. 882. 1 Bl. Rep. 190.*

The master shall have his freight though the goods are spoiled, if the merchant takes them.

A. and *B.* merchants abroad, ship tobacco for *Liverpool*, consigned to *A.* himself there, to whose order the bills of lading are made. One of these bills is sent enclosed in a letter from the shippers to *C.* at *Liverpool*, advising him of such consignment to *A.* and that *A.* intended to proceed to *Liverpool*; but in case he should not arrive in time, desiring *C.* to do the best for them. The tobacco having arrived in a damaged state is required to be landed, and is deposited in the king's warehouse, pursuant to the statute; and afterwards *C.* acting as agent for *A.* within the knowledge of the captain, makes an entry of it in his own name in the

custom-house, to avoid seizure. Held that this was not such an acceptance of the cargo by *C.* as would make him liable to the captain for the freight. *Ward v. Felton*, *T. 41 Geo. III.* 1 *East's Rep.* 507.

The merchant may abandon *all*, though all are not lost: but he cannot abandon some and take some: if he abandon all, he is excused freight.

A ship-owner having first insured his *ship* with *A.* and his freight with *B.* for a certain voyage, and having notice of an embargo laid on the ship in a foreign port, abandons the ship and freight to the respective underwriters, and receives from them the whole amount of their subscriptions as for a total loss of both; first undertaking, by a memorandum on the *ship* policy, to assign to the underwriters thereon his interest in the ship, and to account to them for it; and afterwards undertaking, by a similar memorandum on the *freight* policy to assign to those underwriters all right of recovery, compensation, &c. The ship being afterwards liberated, and earning freight, which was received by the assured; held, that however the question of priority as to the title of the freight might have been as between the different sets of underwriters litigating out of the same fund, and however the weight of argument might preponderate more in favour of the underwriters on the ship; yet that the assured, who had received the freight from the shippers of goods, was at all events liable on his express undertaking to pay it over to the underwriters on freight; and that without deducting the expenses of provisions, wages, &c. which were charges on the owner before the abandonment, and on the underwriters on the ship afterwards. *Thompson v. Rowcroft*, 4 *East's Rep.* 34.

If the ship is disabled or taken when part of the voyage is performed, without fault of the master, he shall be paid a ratable proportion of the freight. 2 *Burr* 882. See further this *Dict.* tit. *Charter-party, Insurance, Merchant.*

FRENCH Language, anciently used in law records. See tit. *Pleading.*

FRENCHMAN, Heretofore a term for every stranger or outlandish man. *Bract. lib. 3. tract. 2. c. 15.* See *Francigena.*

FRENDWITE, from Sax. *freond*, amicus, & *wite*, mulcta.] A mulct or fine exacted of him who harboured his outlawed friend. *Blount.* But see *Fleta, lib. 1. c. 7.*

FRESCA, Fresh water, or rain, and land floods. *Chart. Antiq.* in *Somner of Gavelkind*, p. 132.

FRESH DISSEISIN, *frisca disseisina*, from Fr. *frais*, recens; and *disseisir*, *possessione ejicere*.] That *disseisin* which a man might formerly seek to defeat of himself, and by his own power, without resorting to the king, or the law; as where it was not above fifteen days old, or of some other short continuance. *Britton*, c. 5. Of this, *Bracton* writes at large, concluding it to be arbitrary. *Lib. 4. c. 5.* See tit. *Disseisin.*

FRESH FINE, A fine levied within a year past: it is mentioned in the statute of *Westm. 2. 13 Edw. 1. st. 2. c. 45.*

FRESH FORCE, *frisca fortia*.] Is a force newly done in any city, borough, &c. And if a person be disseised of any lands or tenements within such a city, or borough, he who hath a right to the land,

by the usage and custom of the said city, &c. may bring his *assise*, or *bill of fresh force*, within forty days after the *force* committed, and recover the lands. *Fitz. N. B.* 7. *Old Nat. Brev.* 4. This remedy may be also had where any man is deforced of any lands, after the death of his ancestor, to whom he is heir; or after the death of tenant for life, or in tail, in dower, &c. within forty days after the title accrued; and in a bill of *fresh force* the plaintiff or demandant shall make protestation to sue in the nature of what writ he will, as *assise of mort d'ancestor*, of *novel disseisin*, *intrusion*, &c. *New Nat. Brev.* 15. The *assise* or bill of *fresh force* is sued out without any writ from the chancery: but after the forty days, there is to be a writ out of chancery, directed to the mayor, &c. But this writ is absolute since ejections have come in use for recovering the possession of lands, &c.

FRESH SUIT, or *pursuit*, *recens insecutio*.] Such a present and earnest following of an offender, where a robbery is committed, as never ceases from the time of the offence done or discovered, until he be apprehended. *Vide post*. And the benefit of such pursuit of a felon is, that the party pursuing shall have his goods restored to him; which otherwise are forfeited to the king. *Staundf. Pl. Cor. lib.* 3. *cap.* 10. & 12. When an offender is thus apprehended, and indicted, upon which he is convicted, the party robbed shall have restitution of his goods; and though the party robbed do not apprehend the thief presently, but that it be some time after the robbery, if the party did what in him lay to take the offender; and notwithstanding in such case he happen to be apprehended by some other person, it shall be adjudged *fresh pursuit*. *Terms de Ley*. It has been anciently holden, that to make a *fresh suit*, the party ought to make *hue and cry* with all convenient speed, and to have taken the offender himself, &c. But at this day, if the party hath been guilty of no gross negligence, but hath used all reasonable care in inquiring after, pursuing, and apprehending the felon, he shall be allowed to have made sufficient *fresh suit*. 2 *Hawk. P. C.* 23. Also it is said, that the judging of *fresh suit* is in the discretion of the court, though it ought to be found by the jury; and justices may, if they think fit, award restitution without making any inquisition concerning the same. 2 *Hawk. P. C. c.* 23. See tit. *Hue and Cry*.

Where a gaoler immediately pursues a felon, or other prisoner escaping from prison, it is *fresh suit*, to excuse the gaoler: and if a lord follow his *distress* into another's ground, on its being driven off the premises, this is called *fresh suit*; so where a tenant pursues his cattle, that escape or stray into another man's lands, &c. *Fresh suit* may be either within the *view*, or without; as to which the law makes some difference; and it has been said, that *fresh suit* may continue for seven years. 3 *Rep. Staundf. P. C.* See tit. *Arrest, Escape, Distress*.

FRETUM BRITANNICUM. It is used in our ancient writings for the *straits* between *Dover* and *Calais*.

FRETUM; FRECTUM, The freight of a ship or freight-money. *Acquietari facietis fretum navium*, &c. *Claus.* 17. *Joh. m.* 16.

FRIBURGH, OR FRITHBURGH, *frideburgum*, from the Sax. *frid*, i. e. *pax*, & *borge*, *fidejussor*.] The same with *frank-fledge*;

the one being in the time of the Saxons, and the other since the Conquest: of these *friburghs*, Bracton treats, *lib. 3. tract. 2. c. 10.* And they are particularly described in the laws of King Edward, set out by Lambard, *fol. 143.* Fleta likewise writes on this subject, *lib. 1. cap. 47.* And Spelman makes a difference between *friborg* and *frithborg*; saying the first signifies *libere securitas*, and the other *facis securitas*. Although *friburghs* or *frithburghers* were anciently required as principal pledges or sureties for their neighbours, for the keeping of the peace, yet certain great persons were a sufficient assurance for themselves, and their menial servants. *Skene.* See tit. *Court-Lect.*

FRIDSTOLL, FRITHSTOW, Sax. *frid*, pax, & *stol*, sedes.]
A seat, chair, or place of peace. In the charter of immunities granted to the church of *St. Peter* in *York* by *Hen. I.* and confirmed *anno 5 Hen. VII.* *Fridstoll* is expounded *cathedra pacis et quietudinis, &c.* And there were many such in *England*; but the most famous was at *Beverly*, which had this inscription: *hac sedes lapidea freedstoll dicitur, i. e. pacis cathedra, ad quam reus fugiendo perveniens omnimodum habet securitatem.* *Camd.* See tit. *Abjuration, Sanctuary.*

FRIENDLESS MAN, The old *Saxon* word for an *outlaw*: because he was, upon his expulsion from the king's protection, denied all help of *friends*, after certain days; *nam forisfecit amicos.* *Bract. lib. 3 tract. 2. c. 12.* See tit. *Friendwite.*

FRIENDLY SOCIETIES, Associations, chiefly among the most industrious of the lower and middling class of tradesmen for the purpose of affording each other relief in sickness; and their widows and children some assistance at their death. These have been thought worthy the protection of the legislature, to prevent frauds which had arisen from the irregular principles on which many of them were conducted.

The stats. 33 *Geo. III. c. 54.* 35 *Geo. III. c. 111.* and 43 *Geo. III. c. 111.* provide, that any number of persons may form themselves into a society, and raise among themselves a fund for their mutual benefit, and make rules and impose fines. The rules, declaring the purpose for which such societies are established, are to be exhibited to the quarter sessions, who may annul or confirm them; in which latter case they are to be signed by the clerk of the peace. No rule thus confirmed to be altered but at a general meeting of the society, and subject to the control of the sessions. Societies may appoint officers, who are to give securities for their trust, the treasurer or trustees by bond, to the clerk of the peace, and other persons to the treasurer or trustees; which bonds are exempted from the stamp duty. Committee of not less than 11 members may be appointed; their powers to be declared by the society and subject to their control. Treasurers and trustees are enabled to lay out subscriptions in purchase of stock, &c. and to sell and change funds for the use of the society; to render accounts and pay over balances. In case of misbehaviour of trustees, application to be made to the court of chancery in which proceedings are to be free of all expense of fees, stamps, &c. and counsel to be assigned gratis by the court. Executors or assignees of trustees, &c. dying or becoming bankrupt to pay the demands of the society in the first place. Effects of the societies vested

in treasurers and trustees who may bring and defend actions. Societies not to be dissolved without consent of five-sixths of the members; rules entered in a book to be received as evidence. Societies may receive donations. Complaints of members against stewards, &c. to be settled by two justices. If rules direct disputes to be settled by arbitration, the award of the arbitrators shall be final. Members of societies producing certificates of steward, &c. not to be removable from any parish till actually chargeable; and similar provisions are made relative to this, as to other certificates under the poor laws.

FRIER, Lat. *frater*, Fr. *frere*.] The name of an order of religious persons, of which there were four principal branches, viz. 1. *Minors*, *Grey Friars*, or *Franciscans*. 2. *Augustines*. 3. *Dominicans*, or *Black Friars*. 4. *White Friars*, or *Carmelites*; of which the rest descend. See stat. 4 Hen. VII. cap. 17. Lyndewood de Relig. Domibus, c. 1.

FRIER-OBSERVANT, *frater observans*.] A branch of the *franciscan friars*, who were *minors*, as well as the *conventuals* and *capuchins*. They were called *observants*, because they are not combined together in any cloister, convent, or corporation, as the *conventuals* are; but tied themselves to *observe* the rules of their order more strictly than the *conventuals*, and upon a singularity of zeal separated themselves from them, living in certain places of their own choosing. Zach. de Res. Eccles. de Regular. c. 12. They are mentioned in the stat. 25 Hen. VIII. c. 12.

FRILING, FREOLING, from Sax. *freoh*, *liber*, and *ling*, progenies.] A freeman born.

FRIPERER, Fr. *fripier*, i. e. interpolator.] One that scours and furbishes up old clothes to sell again; a kind of broker. See stat. 1 Jac. I. c. 21. and tit. *Brokers*.

FRISCUS, Fresh uncultivated ground. Mon. Angl. tom. 2. p. 56.

FRITH, Sax.] A wood, from *frid*, *pax*; for the *English Saxons* held woods to be sacred, and therefore made them sanctuaries. Sir Edward Coke expounds it a plain between woods, or a lawn. Co. Litt. 5. Camden in his *Britannia*, useth it for an arm of the sea, or a strait, between two lands, from the word *fretum*.

FRITHBRECH, *pacis violatio*.] The breaking of the peace. LL. Æthelred, c. 6. See *Grithbreche*.

FRITHGEAR, From Sax. *frith* or *frid*, *pax*, and *gear*, *annus*.] The year of jubilee, or of meeting for peace and friendship. Somn.

FRITHGILD, A *Guildhall*; also a company or fraternity.

FRITHMAN, One belonging to such fraternity or company. Blount.

FRITHMOTE, Is mentioned in the records of the county palatine of *Chester*: Per frithmote, J. Stanley, Ar. clamat capere annuatim de villa de Olton, quæ est infra feodum manerium de, &c. 10 sol. quos comites Cestrie ante confectionem chartæ præd. solebant capere. Pl. in Itin. apud Cestriam. 14 Hen. VII.

FRITHSOKE, FRITHSOKEN, From Sax. *frith* *pax*, and *socne*, *libertas*.] Surety of defence, a jurisdiction for the purpose of preserving the peace; according to *Pleta*, *libertas habendi franci flegii*; seu *immunitatis locus*. Cowel, Blount.

FRODMORTEL, rather **FREOMORTEL**, From Sax. *free*, *free*, and *morthdel*, *homicide*.] An immunity for committing manslaughter. *Mon. Angl. tom. 1. p. 173.*

FRUIT, *Stealing of*.] By stat. 4 *Geo. II. c. 32.* to rob orchards or gardens, of fruit growing therein, may be punished by fine, whipping, &c. and by stat. 1 *Geo. I. c. 48.* fine and imprisonment may be inflicted on persons destroying fruit trees. See tit. *Larceny*.

FRUMGYLD, *Sax.*] The first payment made to the kindred of a person slain, towards the recompense of his murder. *LL. Edmund.*

FRUMSTOL, The chief seat or mansion-house; which is called by some the *Homestol*. *Leg. Ine, c. 38.*

FRUSCA TERRÆ, Waste and desert lands. *Mon. Angl. tom. 2. p. 327.*

FRUSSURA, From Fr. *froissure*.] A breaking down; also a ploughing or breaking up: *frussura domorum* is house-breaking; and *frussura terre*, new broke land. *Mon. Angl. tom. 2. p. 394.*

FRUSTRUM TERRÆ, A small piece or parcel of land. *Domesday.*

FRUTECTUM, A place where shrubs, or tall herbs do grow. *Mon. Angl. tom. 3. p. 22.*

FUAGE. In the reign of king *Edward III.* the *black prince*, having *Acquitain* granted him, laid an imposition of *fuage* upon the subjects of that dukedom, i. e. 12d. for every *fire*. *Rot. Parl. 25 Edw. III.* And it is probable, that the *hearth-money* imposed anno 16 *Car. II.* took its original from hence. See tit. *Fumage*.

FUEL. If any person shall sell billet-wood or faggots for *fuel* under the assise, &c. on presentment thereof upon oath by six persons sworn by a justice of peace, the party may be set on the pillory in the next market-town, with a faggot, &c. bound to some part of his body. Nohe are to buy *fuel* but such as will burn it, or retail it to those who do; on pain to forfeit the treble value; also no person may alter any mark or *assise of fuel*, on the like forfeiture. *Stats. 7 Edw. VI. c. 7. 43 Eliz. c. 14.* See also *Common.*

FUER, Fr. *fuir*, Lat. *fugere*.] *Flight* is used substantively though it be a verb; and is two-fold, *fuer in fact*, or *in facto*, when a man doth apparently and corporally *fly*; and *fuer in ley*, *in lege*, when being called in the county court he appeareth not, which is flight in the interpretation of the law. *Staundf. Pl. Cor. lib. 3. c. 22.*

FUGA CATALLORUM, A drove of cattle; *fugatores carrucarum*, wagoners who drive oxen, without beating or goading. *Fleta, lib. 2. c. 78.*

FUGACIA, A chase; so *fugatio*, is hunting, or the privilege to hunt. *Blount.*

FUGAM FECIT, Is where it is found by inquisition, that a person *fled* for felony, &c. And if *flight* and felony be found on an indictment for felony, or before the coroner, where a murder is committed, the offender shall forfeit all his goods, and the issues of his lands, till he is acquitted or pardoned: and it is held, that

when one indicted of any capital crime before justices of *oyer*, &c. is acquitted at his trial, but found to have fled, he shall, notwithstanding his acquittal, forfeit his goods: but not the issues of his lands, because by acquittal the land is discharged, and consequently the issues. 3 *Inst.* 218. The party may in all cases, except that of the coroner's inquest, traverse the finding of a *fugam fecit*; and the particulars of the goods found to be forfeited, may be always traversed; also whenever the indictment against a man is insufficient, the finding of a *fugam fecit* will not hurt him. 2 *Hawk. P. C. c.* 49. Making default in appearance on indictment, &c. whereby *outlawry* is awarded, is a *flight in law*. In *Scotland*, where a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown. See this *Dict.* tit. *Exigent, Outlawry, Forfeiture*.

FUGITIVE'S GOODS, *bona fugitivorum*.] The goods of him that *fies* upon felony, which after the flight lawfully found on record, do belong to the king or lord of the manor. 5 *Rep.* 109.

FUGITIVES OVER SEA. By two ancient and obsolete, if not expired, statutes, 9 *Edw.* III. c. 10. 5 *Rich.* II. st. 2. c. 2. to depart this realm over the sea without the king's license, except it were great men and merchants, and the king's soldiers, incurred forfeiture of goods: and masters of ships, &c. carrying such persons beyond sea, forfeited their vessels; also if any searcher of any port, negligently suffered any persons to pass, he should be imprisoned, &c. See tit. *Aliens, Allegiance, Foreign Service, Treason*.

FUGITIO, *pro Fuga*. *Knighton, anno 1537*.

FULL AGE, See tit. *Age, Infant*.

FULLUM AQUÆ, A stream or stream of water, such as comes from a mill.

FUMAGE, *fumagium*.] Dung for soil, or manuring of land with dung. *Chart. Rich.* II. *Pat.* 5. *Edw.* IV. And this word has been sometimes used for *smoke money*, a customary payment for every house that had a chimney: *Domesday*. See 1 *Comm.* 324. and this *Dict.* tit. *Taxes*.

FUMADOES, Pilchards garbaged and salted, then hung in the *smoke*, and pressed; so called in *Spain* and *Italy*, whither they are exported in great abundance. See tit. *Fish, Navigation Acts*.

FUNDITORES, Is used for pioneers, in *Pat.* 10 *Edw.* II. m. 1.

FUNDS, See tit. *National Debt, Stocks, Stock-brokers*.

FUNERAL CHARGES, As to the payment of these by an executor, see tit. *Executor* V. 2.

A person died in debt, and 600*l.* was laid out in his funeral: decreed the same should be a debt, payable out of a trust estate, charged with payment of debts, he being a man of great estate and reputation in his country, and buried there; but had he been buried elsewhere, it seemed his funeral might have been more private, and the court would not have allowed so much. *Pre. Ch.* 27.

Where a citizen of *London* devised 700*l.* for mourning, the question was, if it should come out of the whole estate, or out of the legatory part only; it was insisted that if there had been no

direction by the will, or if the will had directed, that the expenses of the funeral should not exceed such a sum, there the deduction must have been out of the whole estate. *Per Cur.* Mourning devised by the will, must come out of the legatory part, and not to lessen the orphanage and customary part. 2 *Vern.* 240.

Executor is not liable to pay for funeral expenses, unless he contracts for it. 12 *Mod.* 256.

Settlements for separate maintenance of the wife shall never extend to funeral charges; and though she made a will, (according to a power given her,) and an executor, and gave several legacies, but there was no residuum for the executor, the husband's estate in the hands of a devisee subject to the payment of debts was made liable to the funeral charges of the wife. 9 *Mod.* 31.

In strictness no funeral expenses are allowable against a creditor, except for the coffin, ringing the bell, parson, clerk, and bearer's fees; but not for pall or ornaments; *per Holt.* 1 *Salk.* 296. Ten pounds is enough to be allowed for the funeral of one in debt; *per Holt.* Baron *Powell* in his circuit would allow but 11s. 6d. as all the necessary charge. *Comb.* 342. *Quere*, if 40s. is not now the usual sum in case of an insolvent? See *Salk.* 196. *Godolph.* p. 2. c. 26. § 2.

FUNGIBLES, Moveable goods which may be estimated by weight, number, or measure. In this sense, jewels, paintings, or other works of art or taste, are not fungibles, their value differing in each individual, without possessing any common standard. *Bell's Scotch Law Dict.*

FURCA ET FOSSA; the gallows and the pit.] In ancient privileges granted by our kings, it signified a jurisdiction of punishing felons; that is, men by hanging and women with drowning. And Sir *Edward Coke* says *fossa* is taken away, but that *furca* remains. 3 *Inst.* 58. And see *Skene*.

FURCARE AD TASSUM, To pitch corn with a fork in loading a wagon, or in making a rick or mow. *Cowel.*

FURCAM ET FLAGELLUM, The meanest of all servile tenures, when the bondman was at the disposal of his lord for life and limb. *Placit. Term Mich.* 2. *Joh. Rot.* 7.

FURIGELDUM, A mulct paid for theft: by the laws of King *Ethelred*, it is allowed, that they shall be witnesses *qui nunquam furigeldum reddiderunt*, i. e. who never were accused of theft.

FURIOSITY, Madness, as distinguished from *fatuity*, or *idiocy*.

FURLONG, A quantity of ground containing generally forty poles or perches in length, every pole being sixteen feet and a half; eight of which *furlongs* make a mile; it is otherwise the eighth part of an acre of land in quantity. *Stat.* 34 *Edw. I. st.* 5. c. 6. In the former acceptation, the *Romans* call it *stadium*; and in the latter *jugerum*. Also the word *furlong* has been sometimes used for a piece of land of more or less acres.

FURNAGIUM, See *Fornagium*.

FURNARIUS, A baker, who keeps an oven; hence *furniare* signifies to bake or put any thing in the oven. *Mat. Paris. anno* 1258.

FUR, *furrura*, from the Fr. *fourer*, i. e. *pelliculare*.] The coat or covering of a beast. The *stat.* 24 *Hen. VIII. c.* 13. men-

tions divers kinds of it, *viz.* *sables*; which are a rich *fur*, of colour between black and brown, the skin of a beast called a *sable*, of bigness between a pole cat and an ordinary cat, bred in *Russia* and *Tartary*. *Lucerns*, the skin of a beast of that name, near the size of a wolf, in colour neither red nor brown, but between both, and mingled with black spots; which are bred in *Muscovy*; and is a very rich *fur*. *Genets*, a beast's skin so called, in bigness between a cat and a weasel, nailed like a cat, and of that nature; and of two kinds, black and gray, the black most precious, which hath black spots upon it hardly to be seen; this beast is the product of *Spain*. *Foins*, are of fashion like the *sable*, the top of the *fur* is black, and the ground whitish; bred for the most part in *France*. *Marten* is a beast very like the *sable*, the skin something coarser, produced in *England* and *Ireland*, and all countries not too cold; but the best are in *Ireland*. Besides these, there are the *itch* or *pole cat*; the *calabar*, a little beast, in bigness near a *squirrel*; *miniver* being the bellies of *squirrels*; and *shanks*, or what is called *budge*; &c. all of them *furs* of foreign countries, some whereof make a large branch of their inland traffic.

FURST AND FONDONG, *Sax.*] Time to advise, or to take counsel. *Leg. Hen. I. c. 46.*

FURTHCOMING, See *Forthcoming*.

FURTUM, Theft or robbery of any kind.

FUSTIANS. No persons shall dress *fustians* with any other instrument than the broad sheers, under the penalty of 20s. And the master and wardens of the company of *cloth-workers* in *London*, &c. have power to search the workmanship of sheermen, as well for *fustian*, as cloth. *Stats. 11 Hen. VII. c. 27. 39 Eliz. c. 13.* See this *Dict. tit. Manufacturers*.

FUSTICK, Wood brought from *Barbadoes*, *Jamaica*, &c. used by dyers, mentioned in stat. 12 *Car. II. c. 18.* See *tit. Navigation Acts*.

FYRDERINGA, FYRTHING, FYRDUNG, From *Sax. fyrderung*, i. e. *expeditionis apparatus*.] A going out to war or a military expedition at the king's command; not going upon which, when summoned, was punished by fine at the king's pleasure. *Leg. Hen. I. c. 10.* *Blount* calls it an expedition; or a fault or trespass for not going upon the same.

G.

GABEL, *gabella*, *gablum*, *gablagium*, in French *gabelle*, i. e. *vectigal*.] This word hath the same signification among our ancient writers, as *gabelle* had formerly in *France*: it is a tax, but hath been variously used; as for a rent, custom, service, &c. And where it was a payment of rent, those who paid it were termed *gablatores*. *Domesday. Co. Litt. 213.* It is by some authors distinguished from *tribute*; *gabel* being a tax on moveables, *tribute* on immoveables. When the word *gabel* was formerly mentioned