

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.

P.

PAAGE, *paagium*, The same with *passagium*. *Mat. Paris* 767: See *Passagium*.

PACIBILIS, Payable or passable. *Ex Regis. Grenefeld. Archiep. Ebor. MS.*

PACARE, To pay; as *tolnetum pacare*, is to pay toll, *Mon. Angl. tom. 1. pag. 384.* Hence *pacatio*, payment, *Mat. Paris, sub. an. 1248.*

PACE, *passus*.] A step in going, containing two feet and an half, the distance from the heel of the hinder foot to the toe of the fore-foot; and there is a Pace of five foot, which contains two steps, a thousand whereof makes a mile; but this is called *passus major*.

PACEATUR. *et recipiet Agentrida corium ejus, & carnem, & Paceatur de cetero*, i. e. Let him be free, or discharged, for the time to come. *Ll. Inæ. c. 45.*

PACIFICATION, *pacificatio*.] A peace-making, quieting, or appeasing; relating to the wars between *England* and *Scotland*, anno 1638, mentioned in the statute 17 *Car. 1. c. 17.*

PACK of WOOL, A horse-load, which consists of seventeen stone and two pounds, or 240 pounds weight. *Merch. Dict.: Fleta. lib. 2. c. 12.*

PACKAGE and **S**CAVAGE, Antient duties, payable on merchandise to the city of London. See *Scavage*.

PACKERS, Persons appointed, and sworn duly, to pack herrings. See title *Herrings*.

PACKETS, Packet vessels, prohibited from exporting or importing goods. *Stat. 13 & 14 Car. 2. c. 11. § 22.* See title *Customs*.

PACKING WHITES, A kind of cloth so called, mentioned in *stat. 1 R. 3. c. 8.*

PACT, *Fr.*] A contract or agreement. *Law French Dictionary.*

PAGUS, A county: *Alfred Rex Anglo-Saxonum natus est in Villa Regia quæ dicitur Wantage in illa paga quæ nominatur Berksh. &c.*

PAIN, or **P**EINE, **F**ORT ET **D**URE, *Fr.*—*Lat. piana fortis &*

dura.] A special punishment heretofore inflicted on those who, being arraigned of felony, refused to put themselves on the ordinary trial, but stubbornly stood mute; vulgarly called *Pressing to Death*. See title *Mute*.

PAINS and PENALTIES. Acts of parliament to attain particular persons of treason or felony, or to inflict Pains and Penalties, beyond or contrary to the Common Law, to serve a special purpose, are to all intents and purposes new laws, made *pro re nata*, and by no means an execution of such as are already in being. 4 *Comm. c.* 19. § 1. See title *Attainder*.

PAIS, A county or region, *pagus; g, in i vel y converso. Spelm.* Trial *per pais*, by the country, *i. e.* a Jury.

PAISSO, Pasnage, or liberty for hogs to run in forests or woods to feed on mast. *Mon. Angl.* i. 682. See *Passune*.

PALACES. The limits of the Palace of *Westminster*, *stat.* 28 *Hen.* 8. *c.* 12. See *Marshal; Murder; Striking*.

PALAGIUM, A duty to lords of manors, for exporting and importing vessels of wine in any of their ports.

PALATINE, County; See *County*.

PALFREY, *Palfredus, palafredus, palefredus, palifredus.*] One of the better sorts of horses used by noblemen or others for State: and sometimes of old taken for a horse fit for a woman to ride. *Camden* says, that *William Fauconbergh* held the manor of *Cukeny*, in the county of *Nottingham* in serjeanty, by the service of shoeing the King's Palfrey, when the King should come to *Mansfield*. See 1 *Inst.* 149.

PALICEA, A park pale. *Cowell*.

PALINGMAN, mentioned in *stats.* 22 *Ed.* 4. *c.* 23: 11 *H.* 7. *c.* 23; seems to be a merchant denizen, one born within the *English* pale. But *Skinner* judges it to signify a fishmonger, or merchant of fish. *Cowell*.

PALLA, A canopy; also often used for an altar-cloth. *Matt. Paris*, *sub ann.* 1236.

PALLIO COOPERIRE. It was antiently a custom where children were born out of wedlock, and their parents afterwards intermarried, that those children, together with the father and mother, stood under a cloth extended while the marriage was solemnizing, which was in the nature of adoption; and by such custom the children were taken to be legitimate. *Epist. Rob. Grosthead Episc. Lincoln.* Such children, however, were never legitimate in this country at Common Law, though the clergy wanted to have a law pass to render them legitimate. See *Bastard*.

PALL; PALLIUM, The pontifical vesture made of lamb's wool, in breadth not exceeding three fingers cut round that it may cover the shoulders; it has two labels or strings on each side, before and behind, and likewise four purple crosses on the right and left, fastened with pins of gold, whose heads are *Sapphire*: these vestments the Pope gives or sends to archbishops and metropolitans, and upon extraordinary occasions to other bishops; who wear them about their necks at the altar, above their other ornaments. The Pall was first given to the bishop of *Ostia* by Pope *Marcus* the Second, *anno* 336.

Durandus, in his *Rationale*, tells us that it is made after the following manner, *viz.* The nuns of *St. Agnes* every year, on the feast day of their saint, offer two white lambs on the altar of their church,

during the time they sing *Agnus Dei* in a solemn mass; which lambs are afterwards taken by two of the canons of the *Lateran* church, and by them given to the Pope's subdeacons, who put them to pasture till shearing time, and then they are shorn, and the pall is made of their wool, mixed with other white wool; the Pall being thus made is carried to the *Lateran* church, and there placed on the high altar by the deacons of that church on the bodies of St. *Peter* and St. *Paul*; and after the usual watching, it is carried away in the night, and delivered to the subdeacons who lay it up safe. *Selden's Hist. Tithes*, 227. See also *Cressy's Church Hist.* 972.

PALMISTRY, A kind of divination, practised by looking upon the lines and marks of the hands and fingers; being a deceitful art used by *Egyptians*, prohibited by *stat. 1 & 2 P. & M. c. 4*. See title *Egyptians*.

PAMPHLETS, Of a certain size, are among the articles liable to a stamp duty.

PANDECTS, The books of the Civil Law, compiled by *Justinian*. See title *Civil Law*.

PANDOXATRIX, An ale-wife, who both brews and sells ale or beer; from *pandoxatorium*, a brewhouse, *Statut. & consuetud. burgi ville de Montgom. temp. Hen. 2*.

PANEL, [*panella, panellum*.] According to Sir *Edward Coke*, denotes a little part; but *Spelman* says, that it signifies *schedula vel pagina*, a schedule or page; as a Panel of parchment, or a counterpane of an indenture; but it is used more particularly for a schedule or roll, containing the names of such jurors as the sheriff returns to pass upon any trial. *Kitch. 226: Reg. Orig. 223*. And the impaneling a jury is the entering their names by the sheriff into a Panel or little schedule of parchment; in *panello assise*. *Stat. 8 H. 6. c. 12*. See titles *Jury; Trial*.

PANES DE MANDATO; See *Mandato*.

PANETIA, A pantry, or place to set up cold victuals. *Cowell*.

PANIS ARMIGERORUM, The bread distributed to servants. *Mon. Angl. i. 240*.

PANIS BISUS, Coarse bread. *Mon. Angl. i. 240*.

PANIS BLACKWHYTLOF, Bread of a middle sort, between white and brown, such as in *Kent* is called *Ravel-bread*. In religious houses it was their coarser bread made for ordinary guests, and distinguished from their household loaf, or *Panis conventualis*, which was pure manchet, or white bread. *Cowell*.

PANIS MILITARIS, Hard biscuit, brown George, camp bread, coarse and black. The prior and convent of *Ely* grant to *John Grove*, a corody or allowance,—*Ad suum victum quolibet die unum panem monachalem, i. e. a white loaf*; and to his servant *unum panem nigrum militare, i. e. a little brown loaf or biscuit*. *Cartular. Ely. MS. f. 47*.

PANNAGE, or **PAWNAGE**, [*pannagium* Fr. *Pasnage*.] That food which the swine feed upon in the woods, as mast of beech, acorns, &c. Also it is the money taken by the *Agistors* for the food of hogs in the King's forest. *Cromp. Jurisd. 155. Stat. West. 2. 13 E. 1. st. 1. c. 25*. *Manwood* says *pannage* signifies most properly the mast of the woods or hedge rows. And see *Linwood*. It is mentioned in the statute *20 Car. 2. c. 3*. And in antient charters this word is variously written; as *pannagium, pasnagium, pathnagium, haunagium & pessona*. See *8 Ref. 47*.

PANNUS, A garment made with skins. *Fleta, lib. 2. cap. 14.*

PANTILES, Are among the articles liable to certain duties of excise.

PAPER. The duties on this article form a very productive branch of the public revenue, and are under the survey of the Commissioners of *Excise*. See that title, and titles *Customs; Books, &c.*

PAPER-BOOKS, The issues in actions, &c. upon special pleadings, made up by the clerk of the Papers, who is an officer for that purpose. Upon an issue in law, it is termed the *Demurrer-book*. The clerks of the Papers of the court of King's Bench, in all copies of pleas and Paper-books by them made up, shall subscribe to such paper-books, the names of the counsel who have signed such pleas, as well on the behalf of the plaintiff as defendant; and in all Paper-books delivered to the judges of the Court, the names of the counsel who did sign those pleas are to be subscribed to the books, by the clerks or attorneys who deliver the same. *R. Pasch. 18 Car. 2: 2 Lill. Abr. 268.* See titles *Issue; Practice; Pleading.*

PAPER-OFFICE, An antient office within the palace of *Whitehall*, wherein all the public Papers, writings, matters of state and council, letters, intelligences, negotiations of the King's minister's abroad, and generally all the Papers and despatches that pass through the offices of the two principal Secretaries of State, are lodged and transmitted, and there remain disposed in the way of library. There is also an office belonging to the Court of King's Bench so called. *Dict.*

PAPISTS,

PERSONS *professing the Popish religion*; otherwise distinguished by the denomination of ROMAN-CATHOLICS. The word *Papist* seems to be considered by the Roman-Catholics themselves as a nickname of reproach, originating in their maintaining the supreme ecclesiastical (and heretofore temporal) power of the *Pope, Papa*.—For this reason, probably, the word *Papist* is not to be found in the Index to a most valuable production by a gentleman of that persuasion: though in one of the notes on the work he has given perhaps a more clear and explicit summary of the law on this subject, than has any where else appeared; and which is therefore here introduced, corrected from some trifling errors, and modified so as to answer the present purpose. See 1 *Inst.* 391, *a.* in the *Notes*, and the word *Roman-Catholics* in the Index to the *Notes*. See also 4 *Comm. c. 4*, and Mr. *Christian's Notes there*.

As to papal provisions, and papal process, see this Dictionary, title *Pæmunire*.

I. *Of the Laws passed (in Great Britain) against Papists since the Reformation.*

And herein,

1. *Of the Penalty on Papists for exercising their religious Worship; including the Laws respecting their Places of Education, and Ministers, or as they are usually termed Priests.*
2. *Of the Penalties for not conforming to the Established Church; and see this Dictionary, title Non-conformists.*
3. *Of the Penalties for refusing to take the Oath of Supremacy, and the Declaration against Popery.* [With respect to the not taking the Sacrament, and the Declaration against

Transubstantiation, see this Dictionary, title *Non-conformists*, as regards the Corporation and Test Acts.]

4. *Of the Laws affecting the Landed Property of Papists.*
- II. *Of the Acts past (in Great Britain) in the present Reign (Geo. III.) to relieve the Papists.*
- III. *Of the comparative Situations of Papists and Protestant Dissenters; and of the Disabilities to which the former are still liable in Great Britain.* [As relates to the Operation of the Corporation-Act and Test-Act, see title *Non-conformists*.]
- IV. *The Acts passed in the Parliaments of Ireland for relief of Papists: in the course of the reign of George III.*

I. 1. By various statutes, if any *English* priest of the Church of *Rome*, born in the dominions of the Crown of *England*, came to *England* from beyond the seas, or tarried in *England* three days without conforming to the church, he was guilty of high treason; and they also incurred the guilt of high treason who were reconciled to the see of *Rome*, or procured others to be reconciled to it. By these laws also Papists were totally disabled from giving their children any education in their own religion. If they educated their children at home, for maintaining the school-master, if he did not repair to church, or was not allowed by the bishop of the diocese, they were liable to forfeit 10*l.* a month, and the schoolmaster was liable to forfeit 40*s.* a day; if they sent their children for education to any school of their persuasion abroad, they were liable to forfeit 100*l.* and the children so sent were disabled from inheriting, purchasing, or enjoying any lands, profits, goods, debts, duties, legacies, or sums of money.—Saying mass was punishable by a forfeiture of 200 marks: hearing it by a forfeiture of 100. See *stats.* 1 *Eliz.* c. 2: 23 *Eliz.* c. 1: 27 *Eliz.* c. 2: 29 *Eliz.* c. 6: 35 *Eliz.* c. 2: 2 *Jac.* 1. c. 4: 3 *Jac.* 1. cc. 4, 5: 7 *Jac.* 1. c. 6: 3 *Car.* 1. c. 2: 25 *Car.* 2. c. 2. 7 & 8 *W.* 3. c. 27: 1 *Geo.* 1. st. 2. c. 13.

By *stat.* 11 & 12 *W.* 3. c. 4, where the parents of Protestant children are Papists, the Lord Chancellor may take care of the education of such Protestant children, and make order for their maintenance suitable to the ability of the parent.

2. Under this head are to be classed those laws which are generally called the Statutes of Recusancy. It should be observed, that absence from church alone and unaccompanied by any other act, constitutes Recusancy, in the true sense of that word. Till the *stat.* 35 *Eliz.* c. 2, all Non-conformists were considered as Recusants, and were all equally subject to the penalties of Recusancy, that statute was the first penal statute made against Popish Recusants, by that name, and as distinguished from other Recusants. From that statute arose the distinction between *Protestant* and *Popish* Recusants; the former were subject to such statutes of Recusancy as preceded that of the 35th of *Elizabeth*, and to some statutes against Recusancy made subsequently to that time; but they were relieved from them all by the act of Toleration, *stat.* 1 *W. & M.* st. 1. c. 18. From the *stat.* 35 *Eliz.* c. 2, arose also the distinction between Papists or persons professing the Popish religion, in general, and Popish

Recusants, and Popish Recusants Convict. Notwithstanding the frequent mention, in the statutes, of Papists or persons professing the Popish religion, neither the statutes themselves, nor the cases adjudged upon them, present a clear notion of the acts or circumstances that, in the eye of the law, constituted a Papist, or a person professing the Popish religion. When a person of that description absented himself from church, he came under the legal description of a Popish Recusant; when he was convicted in a Court of law of absenting himself from church, he was termed a Popish Recusant Convict; to this must be added the constructive Recusancy, incurred by a refusal to take the Oath of Supremacy. With respect to the statutes against Recusancy; by these statutes Popish Recusants Convict were punishable by the censures of the church, and by a fine of 20*l.* for every month during which they absented themselves from church; they were disabled from holding offices or employments; from keeping arms in their houses; from maintaining actions or suits at law, or in equity: from being executors or guardians; from presenting to advowsons; from practising in the law or physic; and from holding offices civil or military; they were subject to the penalties attending excommunication; were not permitted to travel five miles from home, unless by licence, upon pain of forfeiting all their goods; and might not come to Court under pain of 100*l.* [No marriage or burial of such Recusant, or baptism of his child, should be had otherwise than by ministers of the church of *England*, under severe penalties imposed by *stat. 3 Jac. 1. c. 5.*] A married woman, when convicted of Recusancy, was liable to forfeit two thirds of her dower or jointure. She could not be executrix or administratrix to her husband, nor have any part of his goods; and during her marriage she might be kept in prison, unless her husband redeemed her at the rate of 10*l.* a month, or the third part of his lands; Popish Recusants Convict were, within three months after conviction, either to submit and renounce their religious opinions, or, if required by four justices, to abjure the realm; and if they did not depart, or if they returned without licence, they were guilty of felony, and were to suffer death as felons. See the statutes referred to under the former head; and, for the cases applicable to them, this Dictionary, title *Recusant*.

3. It must be premised, that the Roman-Catholics make no objection to take the Oath of Allegiance in *stat. 1 Geo. 1. st. 2. c. 13*; or the Oath of Abjuration in *stat. 6 Geo. 3. c. 53*.—With respect to the Oath of Supremacy by *stat. 1 Eliz. c. 1*. the persons therein mentioned were made compellable to take the Oath of Supremacy contained in that act: by *stat. 3 Jac. 1. c. 4*, another oath was prescribed to be taken, commonly called the Oath of Allegiance and Obedience; these oaths were abrogated by *stat. 1 W. & M. st. 1. c. 8*; and a new Oath of Allegiance and a new Oath of Supremacy were introduced, and required to be taken in their stead; the *stat. 1 Geo. 1. st. 2. c. 13*, contains an Oath of Supremacy, in the same words as the Oath of Supremacy required to be taken by *stat. 1 W. & M. st. 1. c. 8*. By that Oath persons are made to swear that “no foreign prince, person, prelate, State, or potentate, hath, or ought to have, any jurisdiction, power, supremacy, pre-eminence, or authority, ecclesiastical or spiritual, within the realm.” It was required to be taken by the persons therein named; it might be tendered to any person, by any two justices of the peace; and persons refusing the Oath so tendered

were adjudged to be Popish Recusants Convict, and to forfeit and to be proceeded against as such. This was the constructive Recusancy referred to above. See also title *Oaths*. It was not the offence itself of Recusancy, which, as already observed, consisted merely in the party's absenting himself from church; it was the offence of not taking the Oaths of Supremacy, and the other Oaths prescribed by the *stat. 1 Geo. 1. st. 2. c. 13*, the refusal of which was, by that statute, placed on the same footing as a legal conviction on the statutes of Recusancy; and subjected the party refusing to the penalties of those statutes. This was the most severe of all the laws against Papists. The punishment of Recusancy was penal in the extreme; and the persons objecting to the oath in question might be subjected to all the penalties of Recusancy, merely by their refusing the oath when tendered to them. It added to the penal nature of these laws, that the oath in question might be tendered, at the mere will of two justices of peace, without any previous information or complaint, before a magistrate, or any other person. Thus by refusing to take the Oath of Supremacy, when tendered to them, they became liable to all the penalties of Recusancy; and the same refusal, by *stats. 7 & 8 W. 3. c. 4: 1 Geo. 1. st. 2. c. 13*, restrained them from practising the law as advocates, barristers, solicitors, attorneys, notaries, or proctors; and from voting at elections. With respect to the declaration against popery, the *stat. 30 Car. 2. st. 2. c. 1*, contains the declaration, and prescribes it to be made by members of either House of Parliament before they take their seats. By it, they declare their disbelief of the doctrine of transubstantiation, and their belief that the invocation of saints, and the sacrifice of the mass, are idolatrous.

4. How the landed property of Papists was affected by the laws against Recusancy has been already mentioned. By *stat. 11 & 12 W. 3. c. 4*, it was enacted, that a person educated in the Popish religion, or professing the same, who did not in six months, after the age of sixteen, take the oaths of Allegiance and Supremacy, and subscribe the declaration prescribed by *stat. 30 C. 2. st. 2. c. 1*, should, in respect of himself only, and not of his heirs or posterity, be disabled to inherit or take lands by descent, devise, or limitation, in possession, reversion, or remainder; and that, during his life, till he took the oaths, and subscribed the declaration against popery, his next of kin, who was a Protestant, should enjoy the lands, without accounting for the profits; and should be incapable of purchasing; and that all estates, terms, interests, or profits out of lands, made, done, or suffered to his use, or in trust for him, should be void.

By *stat. 3 Jac. 1. c. 5: 1 W. & M. c. 26: 12 Ann. st. 2. c. 14: 11 G. 2. c. 17*, Papists or persons professing the Popish religion, were disabled from presenting to advowsons, and other ecclesiastical benefices, and to hospitals and other charitable establishments. By annual acts of the legislature, Papists being of the age of eighteen years, and not having taken the Oaths of Allegiance and Supremacy, were subjected to the burthen of the double land-tax. By *stat. 1 Geo. 1. st. 2. c. 55*, they were required to register their names and estates in the manner, and under the penalties, therein mentioned; and by *stat. 3 Geo. 1. c. 18*, continued by several subsequent statutes, an obligation of enrolling their deeds and wills was imposed on them. Such were the principal penal laws against Roman-Catholics, at the time of the accession of the House of *Brunswick*.

The above summary of the laws against Papists is extracted from the publication of a Roman-Catholic; it is observable that it does not exactly tally with the enumeration made by *Blackstone*, in 4 *Comm.* c. 4; but it is presumed, the above statement is as correct, as interest and conscience, two powerful incentives, could possibly make it. As an apology for the origin of these laws, the learned Commentator observes, that they are seldom exerted; and are rather to be accounted for from their history, and the urgency of the times which produced them, than to be approved, on a cool review, as a standing system of laws. The student will perceive the necessity of their being recapitulated in this work; as most of them are now only repealed on certain conditions (see *post* II.,) which, if not complied with, leave the Popish Recusant in a state, even yet by no means enviable; though, as it appears, absolutely necessary for the preservation of our constitution.

II. THE only act of any importance which, till the reign of his present Majesty, was passed for their relief, (and that operated but in an indirect manner for their benefit,) was *stat.* 3 *Geo.* 1. c. 18. On the construction of *stat.* 11 & 12 *W.* 3. c. 4, it had been held, that as it expressly confined the disability of Papists to take by descent to themselves only, and preserved their heirs and posterity from its operation, it was not to be construed as preventing the vesting of the freehold and inheritance in them, in cases of descent, or transmitting them to their posterity; but that the disability respected only the pernanacy of the profits, or beneficial property of the lands, of which it deprived them, during their non-conformity. Whether that part of the statute which relates to their taking by purchase should receive the same construction was a frequent subject of discussion, the statute being, in that branch of it, without any limitation. To remedy this, the said *st.* 3 *Geo.* 1. c. 18, was passed; it enacts, that no sale for a full and valuable consideration, by the owner or reputed owner of any lands, or of any interest therein, theretofore made, or thereafter to be made, to a Protestant purchaser, shall be impeached by reason of any disability of such Papist, or of any person under whom he claims, in consequence of *stat.* 11 & 12 *W.* 3. c. 4; unless the person taking advantage of such disability shall have recovered before the sale, or given notice of his claim to the purchaser; or before the contract for sale, shall have entered his claim at the quarter sessions, and *bona fide* pursued his remedy. The statute then recites the clauses of *stat.* 11 & 12 *W.* 3. c. 4, disabling Papists from purchasing; and afterwards enacts, that these clauses shall not be thereby altered or repealed, but shall remain in full force. This proviso is couched in such general words, that it created a doubt in some, whether it did not nearly frustrate the whole effect of the act. To this it was answered, that, notwithstanding the proviso, the enacting part of the statute was in full force, for the benefit of a Protestant purchaser; and that, the proviso operated only to declare that Papists themselves should not derive any benefit from the act, in any purchases they should attempt to make, under the foregoing clauses. This was considered the better opinion, and on the authority of it, many purchases of considerable consequence were made. See also *stat.* 6 *Geo.* 2. c. 5.

During the present reign, two statutes, each of great importance, have been passed in favour of the Roman-Catholics; by *stat.* 18 *Geo.*

3. c. 60, it was enacted, that so much of *stat. 11 & 12 W. 3. c. 4*, as related to the prosecution of the Popish priests and jesuits, and imprisoning for life Papists who keep schools, or to disable Papists from taking by descent or purchase, should be repealed, as to all Papists, or persons professing the Popish religion, claiming under titles not thentofore litigated, who, within six months after the act passed, or their coming of age, should take the oath therein prescribed.

This is an oath expressive of allegiance to his Majesty, abjuration of the Pretender, renunciation of the Pope's civil power, and abhorrence of the doctrines of destroying, and not keeping faith with, heretics; and of deposing or murdering princes excommunicated by authority of the See of Rome.

Upon this statute a case was decided in Chancery, *Dec. 18, 1783, Bunting v. Williamson*. A bill had been filed, claiming an estate given to a person professing the Popish religion, by will, alleging the incapacity occasioned by *stat. 11 & 12 W. 3. c. 4*. The testator died many years before, and after his death a suit had been instituted by another person who claimed as his heir at law, and that suit was depending at the time when the *stat. 18 Geo. 3. c. 60*. was passed; but was afterwards dismissed for want of prosecution. The plaintiff filed his bill some time after the act, claiming in right of his wife as heir at law. The defendants pleaded their title under the testator's will; and that the defendant, who was beneficially interested, having or claiming the estate under that will, had taken the oath prescribed by the act; and concluded with an averment, that the title had not been before litigated by the plaintiff, or any person under whom he claimed. The plaintiffs, on argument of the plea, contended, that the words *not hitherto litigated*, extended to the case then before the court, because the title had been litigated, and was in litigation at the time the act passed. But the lords commissioners *Ashhurst* and *Hotham* were clearly of opinion, that the plaintiff not having before litigated the title, nor claiming under any person who had litigated it, the case of the defendants was within the benefit of the act, notwithstanding the prior litigation; and the plea was allowed.

The *Stat. 31 Geo. 3. c. 32*, has afforded the most effectual relief yet bestowed on the Roman-Catholics. That statute may be divided into six parts: the 1st contains the declaration and oath afterwards referred to in the body of the act, and prescribes the method of taking it: the 2d is a repeal of the statutes of Recusancy, in favour of persons taking the oath thereby prescribed: the 3d is a toleration, under certain regulations, of the religious worship of the Roman-Catholics, qualifying in like manner, and of their schools for education: the 4th enacts, that in future no one shall be summoned to take the Oath of Supremacy prescribed by *stats. 1 W. & M. st. 1. c. 8: 1. Geo. 1. st. 2. c. 13*: [But electors of members of parliament in *England*, still remain bound to take this Oath: See *post* III.; and this Dict. title *Parliament*.] or the declaration against transubstantiation required by *stat. 25 Car. 2. c. 2*; that the *stat. 1 W. & M. st. 1. c. 9*, for removing Papists, or reputed Papists, from the cities of *London* and *Westminster* shall not extend to Roman-Catholics taking the appointed oath; and that no peer of *Great Britain* or *Ireland*, taking that oath, shall be liable to be prosecuted for coming into his Majesty's presence, or into the Court or house where his Majesty resides, under *stat. 30 Car. 2. c. 1*. The 5th part of the act repeals the laws requiring the deeds and

wills of Roman-Catholics to be registered or inrolled; the 6th excuses persons acting as counsellors at law, barristers, attorneys, clerks, or notaries, from taking the Oath of Supremacy or the declaration against transubstantiation.

To state this statute something more particularly: Roman-Catholics, who are willing to comply with the requisitions contained in it, must appear at some of the Courts at *Westminster*, or at the Quarter Sessions held for the county, city, or place where they shall reside, and shall make and subscribe a declaration, that they profess the Roman-Catholic religion; and also an oath, which is nearly similar to that required by *stat. 18 Geo. 3. c. 60*, the substance of which is stated above; the chief difference in the oath is, that the words of that in *stat. 31 Geo. 3. c. 32*, are stronger, and more adapted to present times and circumstances, and probably intended to be less liable to equivocation or evasion. Of this declaration and oath being duly made by any Roman-Catholic, the officer of the Court shall grant him a certificate; and such officer shall yearly transmit to the Privy Council, lists of all persons who have thus qualified themselves within the year in his respective Court. The statute then provides, that a Roman-Catholic thus qualified shall not be prosecuted under any statute for not repairing to a parish church, nor shall he be prosecuted for being a Papist, nor for attending or performing mass or other ceremonies of the church of *Rome*; provided that no place shall be allowed for an assembly to celebrate such worship until it is certified to the Sessions; nor shall any minister officiate in it until his name and description are recorded there. And no such place of assembly shall have its doors locked or barred during the time of meeting or divine worship.

And if any Roman-Catholic whatever is elected constable, churchwarden, overseer, or into any parochial office, he may execute the same, by a deputy, to be approved as if he were to act for himself as principal. But every minister who has qualified shall be exempt from serving upon juries, and from being elected into any parochial office. And all the laws for frequenting divine service on *Sundays* shall continue in force; except where persons attend some place of worship allowed by this statute, or the Toleration Act of the *Dissenters*; *stat. 1 W. & M. st. 1. c. 8*.

And if any person disturb a congregation allowed under this act, he shall, as for disturbing a dissenting meeting, be bound over to the next sessions, and, upon conviction there, shall forfeit *20l*.

No Roman-Catholic minister shall officiate in any place of worship having a steeple and a bell, or at any funeral in a church or churchyard, or shall wear the habits of his order, except in a place allowed by this statute, or in a private house where there shall not be more than five persons besides the family. This statute shall not exempt Roman-Catholics from the payment of tithes, or other dues, to the church; nor shall it affect the statutes concerning marriages, or any law respecting the succession to the Crown. No person who has qualified shall be prosecuted for instructing youth, except in an endowed school, or a school in one of the *English Universities*; and except also, that no Roman-Catholic schoolmaster shall receive into his school the child of any Protestant father; nor shall any Roman-Catholic keep a school until his or her name be recorded as a teacher at the sessions.

No religious order is to be established; and every endowment of a school or college by a Roman-Catholic shall still be superstitious and unlawful.

The first part of the above act gives rise to two observations. The declaration prescribed by the act is contained in these words: "I, *A. B.* do hereby declare, that I do profess the Roman-Catholic religion." Till the passing of this act, the persons who were the subject of it were known in the *English* law by the name of Papists, reputed Papists, or persons professing the Popish religion. By requiring this declaration from them, the law has imposed on them, and probably will in future recognise them by, the name of Roman-Catholics. Still, when the antient penal laws against them are to be mentioned with professional accuracy, it seems absolutely necessary to mention them under the name applied to them by the abrogated law. The other observation was of more importance. As the bill was originally framed, and as it stood, when, having passed the Commons, it was brought into the House of Lords, the first clause in it directed, that the oath contained in the *stat. 18 Geo. 3. c. 60.* should be taken no longer; but that the oath appointed by the bill should, in future, be administered in its stead, and should give the same benefits and advantages, and should operate to the same effects and purposes, as the oath contained in the statute *18 G. 3. c. 60.* This clause was altered, in the House of Lords, to the form in which it stands in the act. It does not express that the oath contained in it shall entitle the persons taking it to the benefits of the *st. 18 G. 3. c. 60.* it only expresses that it shall be lawful for Catholics to take the oath prescribed at the places and times, and in manner, therein mentioned. Thus it was uncertain whether persons taking only the oath prescribed by the *stat. 31 Geo. 3. c. 32.* would be entitled to the benefit of the *stat. 18 Geo. 3. c. 60.* so as to be relieved from the penalties and disabilities from which the persons taking the oath prescribed by that act were released by it. The chief of these penalties and disabilities were those inflicted by *stat. 11 & 12 W. 3. c. 4.* which disabled them from taking by descent or purchase: and it was thought advisable for every Roman-Catholic, who wished to be secure in the enjoyment of his landed property, to take both the declaration and oath prescribed by the *stat. 31 Geo. 3. c. 32.*; and the oath prescribed by the former *stat. 18 Geo. 3. c. 60.*—But all doubt on this subject is now removed by *stat. 43 G. 3. c. 30.* which after reciting the inconvenience above stated enacts, "That the declaration and oath contained in the act *31 G. 3.* shall, as to all persons who *have* made, taken, and subscribed the same, or who at any time hereafter *shall* make, take, or subscribe the same, give the same benefits and advantage, and be, and operate to and for the same intents and purposes as in and by the said act of *18 G. 3.* is enacted, expressed, and declared of and concerning the oath thereby subscribed."

As to the double land-tax, that, being imposed by the annual land-tax act, a repeal of it could not be effected by any prospective act. It was repealed, by omitting from the annual land-tax act the clause imposing it. The land-tax act of the year 1794, &c. contained also a clause, which, after reciting that lands formerly liable to a double assessment were then possessed by Protestants, enacted, that where any place, in consequence of that circumstance, should be rated at more than four shillings in the pound, the commissioners might, on application, examine into the truth of the complaint, and certify the same

to the barons of the Exchequer, who are empowered to discharge the excess. See title *Land-Tax*.

III. THE Statute 1 *W. & M. st. 1. c. 18*, (commonly called the *Toleration-Act*;) exempts all Dissenters, except Papists and such as deny the Trinity, from all penal laws relating to religion; provided they take the Oaths of Allegiance and Supremacy, and subscribe the declaration against Popery, and repair to some congregation registered in the Bishop's Court, or at the Sessions. But there is nothing in this act which dispenses either with the Test-Act or the Corporation-Act, so far as they impose the obligation of receiving the sacrament of our Lord's Supper on persons serving in offices or elected to serve in corporations; and there is nothing in the statute 31 *Geo. 3. c. 32*, which dispenses Catholics from that obligation, in case of their serving in offices, or being admitted into corporations. With respect therefore to the Test-Act and Corporation-Act, these are the only statutes which subject the Protestant dissenters to any penalties or disabilities; to these the Roman-Catholics are subject equally with the Protestant dissenters: there is, therefore, no penalty or disability that affects the Protestant dissenters, to which Roman-Catholics are not subject equally; but there still remain several penalties and disabilities to which Roman-Catholics are subject, that do not in any respect whatever affect the Protestant Dissenters.

The principal of these are, that by *stat. 30 Car. 2. st. 2. c. 1*, Roman-Catholics, in consequence of refusing the Oath of Supremacy, or the declaration against Popery, are disabled from sitting in either House of Parliament. By *stats. 7 & 8 W. 3. c. 27*, those who refuse to take the Oath of Supremacy are disabled from voting at elections (in Great Britain); and by several statutes, Roman-Catholics are disabled from presenting to advowsons. This latter is peculiar to them; Quakers, and even Jews, having the full enjoyment of the right of presentation. This restraint seems the more unnecessary, as no person can be presented to a living who has not been ordained according to the rites of the Church of England. Previously to his ordination he is examined on his faith and morals by his bishop; he takes the Oath of Allegiance and Supremacy, and subscribes the Thirty-nine Articles; and previously to his admission, he subscribes the three articles respecting the Supremacy, the Common Prayer, and the Thirty-nine Articles; and he makes the Declaration of Conformity. By the Act of Conformity, *stat. 13 & 14 Car. 2. c. 4*, he is bound to use the Common Prayer, and other rites and ceremonies of the Church of England.

Under the *stat. 3 Jac. 1. c. 5*, which disables Popish Recusants Convict from presenting to benefices, it has been adjudged, that the person is only disabled to present; and that he continues patron to all other purposes. *Cawley* 230. That such a person, by being disabled to grant an avoidance, is not hindered from granting the advowson itself, in fee, or for life, for good consideration. 1 *Jon.* 19, 20. And that if an advowson or avoidance belonging to a Papist come into the King's hands, by reason of an Outlawry, or conviction of Recusancy, &c. the King, and not the Universities, shall present. 1 *Jon.* 20: *Hob.* 126. But where a presentment is vested in the University, at the time when the church becomes void, it shall not be divested again by the patron's conforming, &c. 10 *Repl.* 57.

Grants of advowsons, or right of presentation to churches, &c. by any Papists, or person anywise in trust for him, to be void, except made for valuable consideration to some Protestant purchaser, for the benefit of a Protestant only; and persons claiming under such grant shall be deemed as trustees for a Papist, and they and their presentees be compelled to make discovery thereof, and the intent. See *stats. 12 Ann. st. 2. c. 14: 11 Geo. 2. c. 17.*

And bishops are required to examine parsons presented, on oath, before institution; whether the person presenting be the real patron, and made the presentation in his own right, or whether he be not a trustee for a Papist, &c. And if the parson presented refuse to be examined, his presentation shall be void.

By the last Indemnity-Act, 35 G. 3. c. 99, thought necessary (even after the act 31 G. 3. c. 32.) to allow time for inrolling deeds and wills of Papists, there is a proviso that nothing therein shall make good any grant of the right of presentation to any benefice, &c. in trust for a Papist.

Upon the Corporation-Act, it seems to have been the prevailing opinion, that the election of a person who did not comply with the requisites of that statute, and all the acts done by him, were void. To prevent the consequences of this, the *stat. 5 Geo. 1. c. 6*, was passed, intituled, "An Act for quieting and establishing Corporations;" by which it was enacted, that no incapacity, disability, forfeiture, or penalty should be incurred, unless the person were removed, or a prosecution commenced against him, within six months after his election. It was also enacted, that the acts of the person omitting to qualify should not be avoided. Upon this act an important question arose, whether dissenters, being ineligible to public offices, could be obliged to fine for not serving them. This point came to a direct issue, in the case of *Harrison v. Evans*, (see this Dictionary, title *Dissenters*.) when it was determined in favour of the dissenters. For the relief of those who omit to qualify for serving in offices, or for being elected into corporations, an act of parliament is past annually, by which, after mentioning the Corporation and Test Acts, and some others which do not relate to the point under consideration, it is enacted, that persons who, before the passing of the act, have omitted to qualify in the manner prescribed by those acts, and who shall properly qualify before the 25th of the ensuing *December*, shall be indemnified against all penalties, forfeitures, incapacities, and disabilities; and their elections, and the acts done by them, are declared to be good. There is nothing in this act which excludes Catholics from the benefit of it.

By the *Militia Acts*, previous to 42 *Geo. 3. cc. 90, 91*, the oath required to be taken by persons inrolled in the militia of *Great Britain*, was as follows, "I, *A. B.* do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King *George*, his heirs and successors. And I do swear, that *I am a Protestant*, and that I will faithfully serve in the militia, within the kingdom of *Great Britain*, for the defence of the same, during the time for which I am inrolled, unless I shall be sooner discharged." In the acts of 42 *Geo. 3.* the words declaring the person to be a Protestant are omitted. With respect to the right of Roman-Catholics to serve on *Juries*, there does not appear to have ever been any law which subjected them to any disability, except the statutes generally called

the Statutes of Recusancy. The *stat. 13 Car. 2. st. 2. c. 1*, commonly called the Corporation-Act, relates to those offices only which concern the government of cities and corporations. The *stat. 25 Car. 2. c. 2*, commonly called the Test-Act, since explained by *stat. 9 Geo. 2. c. 26*, regards only civil and military offices. Neither of these acts, therefore, abridges Catholics of the right in question. With respect to the statutes of Recusancy, among other penalties to which these subjected Popish Recusants Convict, one was, that they became liable, upon conviction, to all the consequences of excommunication; and it has been generally understood, that persons excommunicated are disabled from serving on juries. It has been already observed, that, in the proper sense of the word, not attending the service of the Church of *England* alone, and unaccompanied by any other circumstance, constitutes Recusancy. Of this non-attendance at church, every Roman-Catholic, necessarily, was guilty, and he might be convicted of it by a very summary process. But till his guilt was established in a judicial manner, the law did not take notice of it; and therefore, unless an actual conviction had taken place, he was not subject to any of the penalties consequent on Recusancy. But it has been mentioned, that there was, besides this, a species of constructive Recusancy, to which every Catholic was liable, by refusing to make the declaration against Popery, and to take the Oath of Supremacy. This had a more direct operation on their ability to serve as Jurors. Now, as well the declaration against Popery as the Oath of Supremacy might be tendered to a Catholic in the very court where he presented himself to serve as a jurymen: a refusal amounted to conviction; on conviction he became subject to all the penalties of excommunication, and one of those penalties, (at least, by the opinion of the old lawyers,) was a disqualification to serve on juries. Thus, it was always in the power of the court, and perhaps of any two Magistrates present, to convict, on the spot, a Catholic of Recusancy, and thereby render problematical at least his capacity to serve as a juror. Such appears to have been the situation of Catholics, in this respect, previously to the *stat. 31 G. 3. c. 32*. Since the passing of that act, they stand, as to the serving upon juries, in the same predicament as the rest of his Majesty's Subjects. By that statute, they are freed from the penalties incident either to positive or to constructive Recusancy. It has been stated, that ministers of Roman-Catholic congregations are exempted from serving on juries, by § 8 of the statute; it seems to follow, therefore, that, without this clause, they would have been liable to serve; and consequently, that all persons out of the reach of this clause are in the eye of the law subject to the duty, and have, of course, the capacity of serving.

It has been heretofore said, that persons convicted of Popish Recusancy may be taken up by the writ *de excom. capiend.*, and shall not be admitted as competent *witnesses* in a cause: but this seems to be carried beyond the intent of the statute. 2 *Bulst.* 155, 156.

With respect to the right of Roman-Catholic merchants to be summoned to the meetings of *British* factories abroad, it appears, that they have, and always had, a right to be admitted to them. The meetings of the factory in *Portugal* were regulated by *stat. 8 Geo. 1 c. 17*, but that act contains nothing which discriminates Roman-Catholics from other merchants. All the foreign factories are, therefore, in this respect, in the same predicament. Now, if Roman-Catholics are

excluded from factories by any act, it must be either by the Corporation-Act or by the Test-Act. But with respect to the Corporation-Act, it is to be observed, that a factory is not a Corporation, in the legal acceptation of that word; and even if it were, it would not fall within the operation of the Corporation-Act, as that is confined to cities, corporations, &c. within *England* and *Wales*, and the town of *Berwick-upon-Tweed*. The operation of the Test-Act is more extensive than the operation of the Corporation-Act; it expressly mention his Majesty's Navy, the islands of *Jersey* and *Guernsey*, and persons who should be admitted into any service or employment in his Majesty's or the Prince of *Wales*' household within the districts therein mentioned. A factory abroad does not, therefore, fall within the operation of that act. Besides, the privilege of being admitted to the meetings of a foreign factory is not an office, or even a right, of that description which falls within either of those acts. There is a reason to suppose, that, in point of fact, Roman-Catholics have not generally been summoned to attend meetings of factories since the year 1720. But the operation and tendency of the laws against Catholics seem to have been such as induced them to forbear asserting some of their most valuable rights, even such as were of the most indisputable nature, rather than obtrude themselves into public notice. If they wish to enforce their right of admission, or their right of voting, they should give notice of their desire to be summoned, and offer to attend at the meetings; then, if admittance should be refused them, or their votes rejected, the proceedings will be illegal; and not only they, but all other persons subject to the proceedings of the factory, will be justified in refusing to pay their contribution-money, or to comply in any other manner with the resolutions or orders of the meeting. Besides, a refusal to admit them to the meetings is certainly a personal injury; and wherever a personal injury is done to an *English* Subject abroad, the remedy must be sought in the jurisdiction where the cause of action happens, if it is subject to the King's jurisdiction; if the King has no jurisdiction in that place, this necessarily gives the King's Court a jurisdiction, within which it is brought, by the known fiction of laying the venue in some county of *England*. This is explained by Lord *Mansfield*, in his argument in *Fabrigas v. Mostyn*, *Cowp.* 170: See also *Phillybrown v. Ryland*, *Stra.* 624: *Ld. Raym.* 1388: 8 *Mod.* 354. And as to the general principle of such an action, see *Ashby v. White*, 6 *Mod.* 45: 1 *Salk.* 19: *Bro. Parl. Ca.*: and this Dictionary, title *Parliament*, VI. B. 3.

What has been said of the right of Roman-Catholics to insist on being admitted to the meetings of *English* factories abroad, and of their means of redress, in case of refusal, applies, with proper qualifications, to every other case, of a similar description, where their right of admission, acting, or voting, is refused them.

On the right of Roman-Catholics to hold offices exercisable abroad, it has been observed, that the Corporation Act extends only to cities, &c. within *England* and *Wales*, and the town of *Berwick-upon-Tweed*; that the Test Act mentions only those places, and his Majesty's Navy, and *Jersey* and *Guernsey*; and that the *stat.* 31 *Geo.* 3. c. 32, repeals the statutes of Recusancy, and relieves Roman-Catholics from the penalties imposed on them for refusing the Oath of Supremacy, and the declaration against Popery: it seems therefore to follow, that there is now in force no law which disables Roman-Catholics from

holding offices wholly exercisable abroad, or from serving or holding offices under the *East India* company, in their foreign possessions. Besides, upon the construction of these laws, and every other law supposed to affect the Roman-Catholics, there seems reason to think, that the same spirit which induced the Legislature to repeal so large a proportion of the penal code against them, will influence the judicature in their construction of the unrepealed part of that code, or of any other statute unfavourable to them, in its apparent tendency or operation, so far as it may be open to a doubtful interpretation.

IV. IRISH Acts of Parliament. The first step taken in the present reign to give relief to the Papists in *Ireland*, was by the acts 1 *G. 3. c. 12* & 13: 3 *G. 3. c. 26*: & 13, 14 *G. 3. c. 25*, by which the possessions of Protestants were protected, who derived title from or through Papists.

The next step was by enabling Papists to take leases for 61 years, of not more than 50 acres of unprofitable bog, for the purpose of reclaiming the same. 11, 12 *G. 3. c. 21*.

By 13, 14 *G. 3. c. 35*, an oath of allegiance and a Declaration was framed for the Papists, and which they were allowed to take, "in order to give them an opportunity of testifying their allegiance, and to promote peace and industry among the inhabitants."—By 17, 18 *G. 3. c. 49*, Papists taking and subscribing this Oath and Declaration, were empowered to take leases for 999 years at a *bona fide* money-rent reserved; and to dispose of the same by will or otherwise. And all lands and tenements whereof any Papist was or should be seized, were declared to be descendible, devisable, and transferrible, as fully as if the same were in the seizer of any other subjects.

By 21, 22 *G. 3. c. 24*, Papists taking Oath, &c. required by 13, 14 *G. 3.* are empowered to purchase, or take by grant, limitation, descent, or devise, any lands, tenements, or hereditaments in *Ireland*, or any interest therein, (except advowsons, and except any manor or borough returning members of Parliament,) and to dispose of the same by will or otherwise; and such lands, &c. so purchased or taken, shall be descendible according to the course of the common law; and devisable, and transferrible in like manner as the lands of Protestants. Popish Ecclesiastics taking the said Oath, are exempted from all penalties and disabilities under former acts. Various minor disabilities are also removed by this act, and 21, 22 *G. 3. c. 62*: & 30 *G. 3. c. 29*.

By 32 *G. 3. c. 21*, Papists (taking the Oath required by 13, 14 *G. 3. c. 35*.) are enabled to be Barristers, Attorneys, Solicitors, or Notaries: but not King's Counsel. By the same act, marriages of Papists with Protestants is allowed.

By 33 *G. 3. c. 21*, the last and most effectual act passed in *Ireland* for the relief of the Papists, it is enacted, that no Subject being a Papist, or married to, or educating children Papists, (taking the Oath, &c. required by 13, 14 *G. 3. c. 35*.) shall be liable to any penalty or disability, or to any law for limiting, charging, or discovering their estates, or touching the acquiring of property, or securities affecting it, save such as Protestants are liable to. And all such parts of Oaths required to be taken at voting, or to qualify for voting for members of Parliament, as deny the so being a Papist, &c. shall not in future be required to be taken by any voter, but shall be omitted to be administered; and such Papists shall not be required, previous to vo-

ting, to take Oaths of Allegiance and Abjuration. § 1. And see 37 G. 3. c. 47. § 19, as to Papist voters taking the Oath required by 13, 14 G. 3. c. 35: and this act, 33 G. 3. before the teste of the writ.

By the same act, 33 G. 3. c. 21. § 7, it is declared lawful for Papists (taking the Oath, &c. required by 13, 14 G. 3. c. 35, and an additional Oath prescribed by this act, 33 G. 3.) to hold, exercise, or enjoy all civil and military offices or places of trust or profit under his Majesty in *Ireland*; and to take degrees and be professors in any College to be founded as a member of Trinity College, *Dublin*, not being exclusively for Papists; and to hold any office or place of trust in, and to be a member of any Lay Body Corporate, (except Trinity College, *Dublin*) without taking Oaths of Allegiance, Supremacy, or Abjuration, &c. With the following *Exceptions*, viz. § 9; Papists are not allowed to sit or vote in either House of Parliament, nor to exercise or enjoy any of the following offices, &c. Lord Lieutenant: Lord Chancellor, Keeper, &c.: Lord High Treasurer: Chancellor of the Exchequer: Chief Justices, Chief Baron, or Judge of the Courts of King's Bench, Common Pleas, or Exchequer: Judge of Admiralty: Master of the Rolls: Secretary of State: Keeper of Privy Seal: Vice Treasurer, or his Deputy: Teller or Cashier of Exchequer: Auditor General: Lieutenant, Governor, or Custos Rotulorum of Counties: Secretary to Lord Lieutenant: Privy Counsellor: Prime Serjeant: Attorney or Solicitor General: Second and Third Serjeant: King's Counsel: Master in Chancery: Provost or Fellow of *Dublin* College: Post Master General: Master and Lieutenant-General of the Ordnance; Commander in Chief of the Forces: General on the Staff: Sheriff or Sub-Sheriff of any County; or any office contrary to the Act of Settlement and the New Rule, under act 17 & 18 Car. 2. And by § 10, Papists are declared not to be enabled to exercise any right of Presentation to any Ecclesiastical Benefice.

By 35 G. 3. c. 21. an Academy was authorised to be established for the education of Papists; in consequence of which the College at *Maynooth* was founded, and has been from time to time supported by grants from Parliament.

PAR, A term in Exchange, where a man to whom a bill is payable receives of the acceptor just so much in value, &c. as was paid to the drawer by the remitter. *Merch. Dict.* And in exchange of money, Par is defined to be a certain number of pieces of the coin of one country, containing in them an equal quantity of silver to that of another number of pieces of the coin of some other country; as where thirty-six shillings of the money of *Holland* have just as much silver as twenty shillings *English* money; and bills of exchange drawn from *England* to *Holland*, at the rate of thirty-six shillings *Dutch*, for each pound sterling, is according to the Par. *Locke's Consid. of Money*, 18.

PARACIUM, The tenure between parceners, viz. that which the youngest oweth to the eldest. *Domesday*.

PARAGE, *paragium*.] Equality of name, blood, or dignity; but more especially of land, in the partition of an inheritance between coheirs: hence comes to disparage and disparagement. *Co. Litt.* 166. *Paragium* was also commonly taken for the equal conditions betwixt two parties, to be contracted in marriage; for the old laws did strictly provide, that young heirs should be disposed in matrimony *cum paragio*, with persons of equal birth and fortune, *sine disparagatione*. See title *Tenure*.

PARAMOUNT, From the French *par*, i. e. *per* and *monter*, *ascendere*.] Signifies in our law the highest lord of the fee, of lands, tenements, or hereditaments. *F. N. B.* 135. As there may be a lord mesne, where lands are held of an inferior lord, who holds them of a superior under certain services; so this superior lord is lord Paramount: and all honours, which have manors under them, have lords Paramount. The King is said to be chief lord, or lord Paramount of all the lands in the kingdom. *Co. Litt.* 1. See title *Tenures*.

PARAPHARNALIA, or PARAPHERNALIA, from the Greek *Παρά, Præter*, and *Φεγνή, Dos*.] Those goods which a wife is entitled to [*secum fert*] over and above her dower or jointure, after her husband's death. See title *Baron and Feme* IV. 7.

PARASITUS, A domestic servant. *Blount*.

PARAVAIL, *per-availe*.] Tenant *Paravail* is the lowest tenant of the fee, or he who is immediate tenant to one who holdeth over of another; and he is called tenant *Paravail*, because it is presumed he hath profit and avail by the land. *F. N. B.* 135: 2 *Inst.* 296: 9 *Reft.* See title *Tenure*.

PARCELLA TERRÆ, A parcel of land used in some ancient charters.

PARCEL-MAKERS, Two officers in the Exchequer that make the Parcels of the escheators' accounts, wherein they charge them with every thing they have levied for the King's use within the time of their being in office, and deliver the same to the auditors to make up their accounts therewith. *Practice Excheq.* 99.

PARCENERS,

QUASI *Parcellers*; i. e. *rem in parcellas dividentes*.] Persons holding lands in copartnership, and who may be compelled to make division. See *Litt.* § 241. These are of two sorts; *viz.* Parceners according to the course of the Common Law; and Parceners according to custom.

I. *Of the Nature of an Estate in Parcenary, or Coparcenary.*

II. *How such Estate may be parted or dissolved, and the Consequences thereof.*

I. PARCENERS by the Common Law, are where a man or woman seised of lands or tenements in fee-simple or fee-tail hath no issue but daughters, and dieth, and the tenements descend to such daughters, who enter into the lands descended to them, then they are called Parceners, and are as but one heir to their ancestor; and they are termed Parceners, because by the writ *de partitione faciendâ* the law will constrain them to make partition; though they may do it by consent, *Œc. Litt.* 243: 1 *Inst.* 164. And if a man seised of lands in fee-simple, or in tail, dieth without any issue of his body, begotten, and the lands descend to the sisters, they also are Parceners; and in the same manner where he hath no sisters, but the lands descend to his aunts, or other females of kin in equal degree, they are also Parceners; but where a person hath but one daughter she shall not be called Parceller, but daughter and heir, *Œc. Litt.* § 242.

If a man hath issue two daughters, and the eldest hath issue divers sons and daughters, and the youngest hath issue divers daughters; the eldest son of the eldest daughter shall not inherit alone, but all the

daughters of the youngest shall inherit, and the eldest son is coparcener with the daughters of the youngest sister, and shall have one moiety, *viz.* his mother's part; so that men descending of daughters may be Parceners, as well as women, and shall jointly plead and be impleaded, *ſc.* 1 *Inst.* 164. None are Parceners by the Common Law, but either females, or the heirs of females, who come to lands or tenements by descent. *Litt.* 254.

Parceners by custom is, where a person seised in fee-simple, or in fee-tail of lands or tenements of the tenure called *gavelkind*, hath issue divers sons, and dies; such lands shall descend to all the sons as Parceners by the custom, who shall equally inherit and make partition as females do, and writ of partition lies in this case, as between females, *ſc.* *Litt.* § 265. Women Parceners make but one heir, and have but one freehold; but between themselves they have in judgment of law several freeholds to many purposes; for one of them may enfeoff the other of her part; and the parcenary is not severed by the death of any of them; but if one dies, her part shall descend to her issue, *ſc.* 1 *Inst.* 164, 165. If one Parcener make a feoffment in fee of her part, this is a severance of the coparcenary, and several writs of *præcipe* shall lie against the other Parceners and the feoffee. 1 *Inst.* 167. Though if two coparceners by deed alien both their parts to another in fee, rendering to them two, and their heirs, a rent out of the land, they shall have the rent in course of parcenary; because their right in the land out of which the rent is reserved was in parcenary. *Ibid.* 160.

If there be two Parceners, and each of them taketh husband, and have issue, and the wives die, the parcenary is divided, and here is a partition in law. 1 *Inst.* 160. Partition of lands held in tail, by the death of one sister without issue is made void, and the other sister as heir in tail will be entitled to the whole land, and have writ of *formedon* where the other Parcener hath aliened. *New Nat. Br.* 476. And a writ of *nuper obiit* lies for one Parcener deforced by another, *ſc.* *F. N. B.* 197.

If any Parceners or their issues be disseised, they must join in an assise against the disseisor; so if they have cause to bring any action of waste, *ſc.* 1 *Inst.* 95, 198. Two Parceners are of land, one enters and claims the whole, and is disseised, she alone may maintain assise; but if the disseisin be of rent, the other Parceners must be named, or the writ shall abate. *Jenk. Cent.* 41, 42.

The possession of one Parcener, *ſc.* of land, without an actual ouster, gives possession to the other of them. *Hob.* 120: *Dyer* 128. One Parcener may justify detaining the deeds, concerning the lands, against another, as they belong to one as well as the other. 2 *Roll. Abr.* 31.

Parceners are to make partition of the lands descended; and estates of coparcenary at Common Law are applicable only to inheritances: partition may be made between Parceners of inheritances which are entire and dividable, as of an advowson, rent-charge, or such like; but it is otherwise of inheritances which are not entire and indivisible, as of a piscary, common without number, or such uncertain profits out of lands; for in such case the eldest Parcener shall have them, and the others have contribution from her out of some other inheritance left by the ancestor; but if there be no such inheritance, then the eldest shall have these uncertain profits for one time, and the youngest for another time. *Dyer*, 153. See *post* II.

Parceners cannot make partition, so as for one to have the land for one time, and another for another, &c. for each is to have her part absolutely; but if an advowson descend to them, they may present by turns; and if there be a common, &c. which may not be divided, one may have it for one year, and another for another year, &c. 1 *Inst.* 164.

An advowson is an entire thing, and yet, in effect, the same may be divided betwixt Parceners, for they may present by turns; and if there be coparceners of an advowson appendant to a manor, and they make partition of the manor, without mentioning the advowson, the same is still appendant, and they may present by turns. 8 *Rep.* 79. If two Parceners be of an advowson, and they agree to present by turns, this is a good partition as to the possession; but it is not a severance of the estate of inheritance. 1 *Rep.* 87.

If three coparceners of an advowson do not agree to present on a vacancy, the eldest, or her assigns, may present on the first turn; and the second and third, or their assigns, to the next turns, according to the order of the birth of the coparceners. 1 *H. Blackst.* 412. See *post* II.

In pleading a right in coparcener to present to an advowson by turns, it is good to state that the right arose because they *did not agree* to present, which is synonymous to saying they *could not agree*. 1 *H. Blackst.* 376.

If one Parcener hath a rent granted to her upon a partition made to make her part equal with the other, she may distrain for the arrears of common right; and so shall the grantee of the rent, because it is not annexed to her person only, but to her estate. 3 *Rep.* 32.

In the case of coparceners of a title of honour the King may direct which one of them and her issue shall bear it; and if the issue of that one become extinct, it will again be in abeyance, if there are descendants of more than one sister remaining. But upon the failure of the issue of all, except one, the descendant of that one being the sole heir, will have a right to claim, and to assume the dignity.

There are instances of a title, on account of a descent to females being dormant, or in abeyance, for many centuries. *Harg. Co. Litt.* 165.

Lord Coke says, there is a difference in an office of honour, which shall be executed by the husband or deputy of the eldest. *Ibid.* Yet when the office of Great Chamberlain had descended to two sisters, co-heiresses of the Duke of *Ancaster*, one of whom was married to *Peter Burrell*, esq. the Judges gave it as their opinion in the House of Lords, "that the office belongs to both sisters; that the husband of the eldest is not of right entitled to execute it; and that both sisters may execute it by deputy, to be approved of by them; such deputy not being of a degree inferior to a knight, and to be approved of by the King." See *Bro. P. C.*

The *properties* of Parceners are in some respects like those of joint-tenants; they having the same unities of *interest, title, and possession*. They may sue and be sued jointly for matters relating to their own lands. *Co. Litt.* 164. And the entry of one of them shall in some cases enure as the entry of them all. *Co. Litt.* 188, 243. They cannot have an action of trespass against each other; but they differ from joint-tenants, in that that they are also excluded from maintaining an action of waste, 2 *Inst.* 403; for coparceners could at all times put a

stop to any waste by writ of partition; but till the statute of *Hen. 8*, joint-tenants had no such power. See title *Joint-Tenants*.

Parceners also differ materially from joint-tenants in four other points: 1. They always claim by descent, whereas joint-tenants always claim by purchase. Therefore, if two sisters purchase lands, to hold to them and their heirs, they are not Parceners but joint-tenants. *Litt.* § 254. And hence it likewise follows, that no lands can be held in coparcenary but estates of inheritance, which are of a descendible nature; whereas not only estates in fee and in tail, but for life or years, may be held in joint-tenancy.

2. There is no unity of *time* necessary to an estate in coparcenary: for if a man hath two daughters, to whom his estate descends in coparcenary, and one dies before the other, the surviving daughter and the heir of the other, or when both are dead, their two heirs are still Parceners; the estate vesting in them each at different times, though it be the same quantity of interest, and held by the same title. *Co. Litt.* 164, 174.

3. Parceners, though they have an *unity*, have not an *entirety* of interest. They are properly entitled each to the whole of a distinct moiety, *Co. Litt.* 163, 4; and of course there is no *jus accrescendi*, or survivorship, between them, for each part descends severally to their respective heirs, though the unity of possession continues; and as long as the lands continue in a course of descent, and united in possession, so long are the tenants therein, whether male or female, called Parceners. But if the possession be once severed by partition, they are no longer Parceners, but tenants in severalty; or if one Parcener alienes her share, though no partition be made, then no longer are the lands held in *coparcenary*, but in common. *Litt.* § 309; and see 2 *Comm. c.* 12. *p.* 187, 8.

One having real and personal estates gave by his will several legacies and annuities, which he directed to be paid out of his real and personal estates which he charged therewith: and then demised certain lands to *A.* and *H.* (two of his five daughters) and their heirs as tenants in common, on condition that in case they or either of them should have no issue, they or she having no issue should have no power to dispose of her share except to her sister or sisters, or their children: and he devised all the rest and residue of his real and personal estates to *A.* and *H.* in fee, whom he made his executrices; on his death *A.* and *H.* entered, and afterwards *A.* levied a fine of her moiety to the use of her husband, in fee, and died: the Court of *K. B.* held, that the condition against alienation, except to sisters, or their children, was good: and that for the breach of it by *A.* in levying the fine, the coheirresses of the devisor might enter on her moiety; it being a remainder on which the residuary clause did not operate. The Court held also that one of the several coheirresses of the devisor might enter for non-performance on breach of the condition, and recover her own share, in ejectment, and that where the entry upon a claim by one of several coparceners, who make but one heir, is lawful, such entry made generally will vest the seisin in all, as the entry of all. *Doe, d. Gill v. Pearson*, 6 *East's Rep.*

II. PARTITION, between Parceners, may be made four ways: *viz.* *First*, When they themselves divide the lands equally into as many

parts as there are Parceners, and each chooses one share or part, the eldest first, and so one after another, &c.

Secondly, When they agree to choose certain friends to make division for them.

Thirdly, Partition by drawing lots, where having divided the lands into as many parts as there are Parceners, and written every part in a distinct scroll, being wrapt up, they each draw one.

And *fourthly*, Partition by writ *de partitione facienda*, which is by compulsion, where some agree to partition, and others do not; and when judgment is given on a writ of partition, it is that the Sheriff shall go to the land, and by the oaths of twelve men make partition between the parties, to hold to them in severalty, without any mention of preference to the eldest sister, &c. *Litt.* 248: 1 *Inst.* 164. But if there be a capital messuage on the land to be divided, the Sheriff must allot that wholly to the eldest of the Parceners. 1 *Inst.* 165.—The partition, made and delivered by the Sheriff and jurors, ought to be returned into Court under the seal of the Sheriff, and the seals of the twelve jurors; for the words of the judicial writ of partition, which command the Sheriff to make partition, are *Assumptis tecum duodecim, &c. et partitionem inde scire facias justiciariis, &c. sub sigillo tuo et sigillis eorum per quorum sacramentum partitionem illam feceris, &c.* If partition be made by force of the King's writ and judgment thereof given, it shall be binding to all parties, because it is made by the Sheriff, by the oath of twelve men, by authority of law; and the judgment is, that the partition shall remain firm and stable for ever. 1 *Inst.* 171.

Blackstone says, there are many methods of making partition, four of which are by consent, and one by compulsion; to which latter may now be added, or indeed for which may be substituted, the proceedings in a Court of Equity to obtain a decree for partition. See this Dictionary, title *Joint-tenants* III. 2.

The four modes of partition by consent are thus stated by *Blackstone*. The first is, where they agree to divide the lands into equal parts in severalty, and that each shall have such a determinate part.

The second is, when they agree to choose some friend to make partition for them, and then the sisters shall choose each of them her part, according to seniority of age; or otherwise, as shall be agreed. The privilege of seniority is in this case personal; for if the eldest sister be dead, her issue shall not choose first, but the next sister. But if an advowson descend in coparcenary, and the sisters cannot agree in the presentation, the eldest and her issue, nay, her husband, or her assigns, shall present alone, and before the younger. *Co. Litt.* 166: 3 *Rep.* 22. And the reason given is, that the former privilege, of priority in choice upon a division, arises from an act of her own, the agreement to make partition, and therefore is merely personal; the latter, of presenting to the living, arises from the act of law, and is annexed not only to her person, but to her estate also. It has been doubted whether the grantee of the eldest sister shall have the first and sole presentation after her death. *Harg. Co. Litt.* 166. But it was expressly determined in favour of such a grantee, in 1 *Ves.* 340. and see 1 *H. Blackst.* 412.

A third method of partition is, where the eldest divides, and then she shall choose last; for the rule of law is, *cujus est divisio alterius est electio*.

The fourth method is, where the sisters agree to cast lots for their shares.

But there are some things which are in their nature impartible. The mansion-house, common of estovers, common of piscary uncertain, or any other common without stint, shall not be divided; but the eldest sister, if she pleases, shall have them, and make the others a reasonable satisfaction in other parts of the inheritance; or if that cannot be, then they shall have the profit of the thing by turns in the same manner as they take the advowson. *Co. Litt.* J64, 165.

There is yet another consideration attending the estate in coparcenary; that if one of the daughters has had an estate given with her in *frankmarriage* by her ancestor, (which is a species of estate-tail, freely given by a Relation for advancement of his kinswoman in marriage,) in this case, if lands descend from the *same* ancestor to her and her sisters, in fee-simple, she or her heirs shall have no share of them, unless they will agree to divide the lands so given in frankmarriage in equal proportion with the rest of the lands descending. *Bract. l. 2. c. 34: Litt. § 266—273.* This is denominated bringing the lands into *hotch-pot*; *Britton, c. 72*; which term *Littleton, § 267, 8*, thus explains: "It seemeth that this word *hotch-pot* is, in *English*, a pudding; for in a pudding is not commonly put one thing alone, but one thing with other things together." By this housewifely metaphor our ancestors meant to inform us, that the lands, both those given in frankmarriage and those descending in fee-simple, should be mixed and blended together, and then divided in equal proportions among all the daughters. But this was left to the choice of the donee in frankmarriage; and if she did not choose to put her lands into hotch-pot, she was presumed to be sufficiently provided for, and the rest of the inheritance was divided among her other sisters. The law of hotch-pot took place then only, when the other lands descending from the ancestor were fee-simple; for if they descended in tail, the donee in frankmarriage was entitled to her share, without bringing her lands so given into hotch-pot. *Litt. § 274.* And the reason is, because lands descending in fee-simple are distributed by the policy of law, for the maintenance of all the daughters, and if one has a sufficient provision out of the same inheritance equal to the rest, it is not reasonable that she should have more; but lands descending in tail are not distributed by the operation of the law, but by the designation of the giver, *per formam doni*; it matters not therefore how unequal this distribution may be. Also no lands but such as are given in frankmarriage shall be brought into hotch-pot, for no others are looked upon in law as given for the advancement of the woman, or by way of marriage portion. *Litt. § 275.* And therefore, as gifts in frankmarriage are fallen into disuse, the law of hotch-pot would not now deserve much notice, had not this method of division been revived and copied by the statute for distribution of personal estates. See this Dictionary, title *Executor V. 9.*

The estate in coparcenary may be *dissolved*, either by partition, which disunites the possession; by alienation of one Parcener, which disunites the title, and may disunite the interest; or by the whole at last descending to and vesting in one single person, which brings it to an estate in severalty. See 2 *Comm. c. 12. §. 189, &c.*

In a writ of partition, the judgment was *quod partitio fiat*; and before it was executed by the Sheriff, a writ of error was brought; and

it was adjudged that a writ of error doth not lie upon this first judgment, because this is not like other actions, where error lies before the *habere facias seisinam* is returned, and the judgment is final; but it is not so in this case, as there must be another judgment, *i. e. quod partitio stabilis maneat*, which cannot be till the partition is made, and returned by the Sheriff. *Hetley 36: Dyer 67.*

If there are two Parceners of a *manor*, and, on partition made, each hath demesnes and services allotted; in this case each is said to have a manor. *1 Leon. 26: Davis 61.* A partition may not be made of franchises, as goods of felons, waifs, estrays, &c. which are casual. *5 Rep. 3.*

Where two persons hold lands *pro indiviso*, and one would have his part in severalty, and the other refuseth to make partition by deed; there the writ *de partitione faciendâ* lies against him who refuses, directed to the Sheriff; and he *must be present* when the partition is made; and if it is objected before the return of the writ, that he was not present, he may be examined by the Court; but after the writ is returned and filed, it is too late. *Cro. Eliz. 9.*

A writ of partition was taken forth, and the Sheriff made partition, but was not upon the land; and on motion that the return might not be filed, but that a new writ might be awarded, because the Sheriff was not on the land, the Court staid the filing, and on examining the Sheriff, ordered a new writ. *Cro. Car. 9, 10.*

On writ of partition to the Sheriff to make partition of lands, part of the lands were allotted to one, and the jury would not assist the Sheriff to make partition of the other part; which appearing on the return of the writ, the Court was moved for an attachment against the jury, and a new writ to the Sheriff. *Godb. 265.* Partition was brought by tenant in fee of one moiety, against tenant for life of the other moiety, on the *stat. 32 Hen. 8. c. 32.* And though it has been resolved, if partition be made between one who hath an estate of inheritance, and another who hath a particular estate for life; that the writ ought to be framed upon the statute, and to be made special, setting forth the particular estate; yet it was held to be good where the writ was general. *Goldsb. 84: 2 Lutw. 1015.*

By *stat. 8 & 9 W. 3. c. 31*, a partition may be made of any estate of freehold, or for term of years, &c. of manors, lands, tenements, and hereditaments whereof the partition is demanded; and if after process of *pone* returned upon a writ of partition and affidavit of notice given of the writ to the tenant to the action, and a copy left with the tenant in possession at least forty days before the return of the said *pone*, &c. there be no appearance entered in fifteen days; the demandant having entered his declaration, the Court may give judgment by default, and award a writ to make partition, whereby the demandant's part or purpart will be set out severally; which writ being executed after eight days' notice, and returned, and thereupon final judgment entered, shall conclude all persons, &c. But the Court may suspend or set aside the judgment, if the party concerned move the Court in a year, and shew good matter in bar. And by this statute, if the High Sheriff, by reason of distance, &c. *cannot be present* at the execution of any judgment in partition, then the Undersheriff *in the presence of two justices of peace of the county*, shall proceed to the execution of the writ by inquisition, and the High Sheriff is to make the return, &c. When the partition is made and returned, the

persons who were tenants of the lands or any part thereof, before divided, shall continue tenants of the lands they held to the respective owners, under such conditions and rents as before; and no plea in abatement shall be admitted or received in any suit of partition; nor shall the same be abated by the death of any tenant, &c.

In a writ of partition the defendant pleaded, that he formerly brought writ of partition against the plaintiff, and had judgment to have partition: and held a good plea; but it was a question, whether it should be pleaded in bar or abatement, or by way of estoppel. *Dyer* 92. No damages can be recovered on a writ of partition, though the writ and declaration conclude *ad damnum*. *Hell.* 35: *Noy* 143.

Where judgment for debt is had against one Parcener, the lands, &c. of both may be taken in execution; and the moiety undivided is to be sold, and then the vendee will be tenant in common with the other Coparcener: if the Sheriff seize only a moiety and sell it, the other Parcener will have a right to a moiety of that money. 1 *Salk.* 392. All partitions ought to be according to the quality and true value of the lands, and be equal in value: but if partition be made by Parceners of full age, and unmarried, and *sane memoriae*, it binds them for ever, although the value be unequal, if it be made of lands in fee; and if it be of lands intailed, it shall bind the parties themselves for their lives, but not their issue, unless it be equal: if it be unequal, the issue of her who hath the lesser part, may, after her decease, disagree, and enter and occupy in common with the aunt; also if any be covert, it shall bind the husband, but not the wife, or her heirs; or if any be within age, it shall not bind the infant, but she may at her full age disagree, &c. 1 *Inst.* 166, 170: 2 *Lil. Abr.* 283. Though if a wife, after coverture, or the infant at her age, accept of the unequal part, they are concluded for ever. 1 *Inst.* 170. And where there be two Coparceners, and one hath seven daughters, and dieth; if the other Parcener releaseth to any one of the daughters her whole part, here, although she to whom the release is made, have not an equal part, the release is good. *Ibid.* 193. It hath been adjudged, that notwithstanding a partition is unequal, if it be by writ, it cannot be avoided; but if it be by deed, it may be avoided by entry. 1 *Inst.* 171.

If the estate of a parcener be in part evicted, that shall defeat the whole partition; partition implying a warranty and condition in law to enter upon the whole on eviction, as in case of exchange of lands. 1 *Inst.* 173: 1 *Rept.* 87. And if after partition, one of the parts is recovered from a Parcener by lawful title, she shall compel the others to make a new partition. *Cro. Eliz.* 902. But as to eviction of Parceners, if one sell her part, and then the part which the other Parcener hath, is evicted; in this case she who loseth her part, cannot enter on the alienee, for by alienation the privity is destroyed. 1 *Inst.* 173. Among Parceners, a partition upon the land may be good without deed; but not among joint-tenants, &c. *Dyer* 29, 194. See title *Joint-tenants*.

FORM OF A COMMON WRIT OF PARTITION.

GEORGE the Third, &c. to the Sheriff of S. greeting: If A. B. make you secure, &c. then summon E. B. that she be before, &c. to shew wherefore, whereas the said A. B. and E. B. together and undivided hold the manor of, &c. with the appurtenances, twenty messuages,

one mill, one dovehouse, twenty gardens, three hundred acres of land, two hundred acres of meadow, a hundred and fifty acres of pastures, one hundred acres of wood, two hundred acres of furze and heath, and twenty shillings rent, with the appurtenances of the inheritance which was of N. B. father of the said A. B. and E. B. whose heirs they are, in &c. the said E. B. doth deny partition thereof to be made between them, according to the law and custom of England: and unjustly will not permit that to be done, as it is said: And have you there the summons and this writ. Witness, &c.

PARCENARY, The holding of lands jointly by Parceners, when the common inheritance is not divided. *Litt.* 56.

PARCHMENT, Is one of the articles liable to a duty of excise; and in case of deeds, &c. written on it, to stamps. See *Paper*.

PARCO FRACTO, A writ against him who violently breaks a pound, and takes out beasts from thence, which for some trespass done, &c. were lawfully impounded. *Reg. Orig.* 166. If a person hath authority to take beasts out of the pound, if he breaks the pound before he demands the cattle of the keeper thereof, and he refuseth or interrupts him in the taking of them, &c. the writ *Parco fracto* lies. *Dr. & Stud.* 112. Damages are recoverable in this writ; and the party may be punished, as for a pound-breach in the Court-leet. 1 *Inst.* 47: *F. N. B.* 100. The word *parcus* was frequently used for a pound to confine trespassing or straying cattle; whence *imparcare* to impound, *imparcatio* pouncing, and *imparcamentum*, right of pouncing, &c.

PARDON,

PARDONATIO; VENIA.] The remitting or forgiving of an offence committed against the King; and is either *ex gratiâ Regis*, or by course of law. *Staundf. Pl. Cor.* 47.

Pardon *ex gratiâ Regis* is that which the King affords by virtue of his prerogative. See this Dictionary, title *Judges*. Pardon by course of law is that which the law in equity affords for a light offence; as casual homicide, when one killeth a man, having no such meaning. *West. Symbol. par.* 2. title *Indictments*, § 46.

The power of pardoning offences is inseparably incident to, and is the most amiable prerogative of, the Crown; and this high prerogative the King is entrusted with upon a special confidence, that he will spare those only whose case, could it have been foreseen, the law itself may be presumed willing to have excepted out of its general rules; which the wisdom of man cannot possibly make so perfect as to suit every particular case. 1 *Show.* 284.

Antiently the right of pardoning offences, within certain districts, was claimed by lords, who had *jura regalia* by antient grants from the Crown, or by prescription. But by *stat.* 27 *H.* 8. *cap.* 24, it was enacted, "That no person shall have power to pardon any treasons or felonies, nor any accessories, nor outlawries; but that the King shall have the authority thereof, united to the Crown of this realm, as of right it appertaineth." *Co. Litt.* 114: 3 *Inst.* 233. And this power belongs only to a King *de facto*, and not to a King *de jure*, during the term of usurpation. *Bro. Abr.* title *Chamber de Pardon* 22.

The power of pardoning offences is stated by *Blackstone* to be one of the great advantages of Monarchy in general, above every other

form of government; and which cannot subsist in Democracies. Its utility and necessity are defended by him, on all those principles which do honour to human nature. See 4 *Comm. c.* 31. *p.* 396, 7.

He then proceeds to consider Pardons under the following heads; a distribution here followed, as most convenient:

- I. *The Object of Pardon; that is, in what Cases, and for what Offences, a Pardon may be granted; or not.*
- II. *The Manner of pardoning; wherein how far a Pardon is grantable of common Right; and by what Words Offences may be pardoned.*
- III. *The method of allowing a Pardon.*
- IV. *The effect of such Pardon when allowed.*

I. THE King may pardon all offences merely against the Crown, or the Public; excepting, 1; That, to preserve the liberty of the Subject, the committing any man to prison out of the realm is by the *habeas-corpus* act, *stat.* 31 *Car.* 2. *c.* 2, made a *premunire*, unpardonable even by the King. Nor, 2; Can the King pardon, where private justice is principally concerned in the prosecution of offenders: "*non potest rex gratiam facere cum injuriâ et damno aliorum.*" 3 *Inst.* 236. Therefore in criminal appeals of all kinds (which are the suit, not of the King, but of the party injured,) the prosecutor may release, but the King cannot pardon. *Ibid.* 237. Neither can he pardon a common nuisance, while it remains unredressed, or so as to prevent an abatement of it; though afterwards he may remit the fine; because though the prosecution is vested in the King to avoid multiplicity of suits, yet, during its continuance, this offence favours more of the nature of a private injury to each individual in the neighbourhood, than of a public wrong. 2 *Hawk. P. C. c.* 37. § 33. Neither, lastly, can the King pardon an offence against a popular or penal statute, after information brought; for thereby the informer hath acquired a private property in his part of the penalty. 3 *Inst.* 338.

There is also a restriction of a peculiar nature, that affects the prerogative of pardoning, in case of parliamentary impeachments; *viz.* that the King's Pardon cannot be *pleaded* to any such impeachment, so as to impede the inquiry, and stop the prosecution of great and notorious offenders. Therefore when, in the reign of *Charles II.* the Earl of *Danby* was impeached by the House of Commons of high treason, and other misdemeanors, and pleaded the King's Pardon in bar of the same, the Commons alleged, "that there was no precedent, that ever any Pardon was granted to any person impeached by the Commons of high treason, or other crimes *depending the impeachment;*" and thereupon resolved, "that the Pardon so pleaded was illegal and void; and ought not to be allowed *in bar* of the impeachment of the Commons of *England;*" for which resolution they assigned this reason to the House of Lords; "that the setting up a Pardon to be a *bar* of an impeachment, defeats the whole use and effect of impeachments; for should this point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future; whereby the chief institution for the preservation of the Government would be destroyed." *Com. Journ.* 28th *Apr.* 1679: 5 *May* 1679: 26 *May* 1679. Soon after the Revolution the Commons renewed the same

claim, and voted, "that a Pardon is not *pleadable in bar* of an impeachment." And at length it was enacted by the Act of Settlement, *stat. 12 & 13 W. 3. c. 2*, "that no Pardon under the great seal of England, shall be *pleadable* to an impeachment by the Commons in Parliament." But, after the impeachment has been solemnly heard and determined, it is not understood that the King's royal grace is farther restrained or abridged; for, after the impeachment and attainder of the six rebel lords in 1715, three of them were from time to time reprieved by the crown, and at length received the benefit of the King's most gracious Pardon; and a remarkable record is cited by Mr. *Christian, Rot. Parl. 50 E. 3. n. 188*; in which it is asserted by the King, and acknowledged by the Commons, that the King's prerogative, to pardon delinquents *convicted* on impeachment, is as antient as the Constitution itself.

It is laid down in general, that the King may pardon any offence, so far as the public is concerned in it, after it is over, consequently may prevent a popular action on a statute, by pardoning the offence before the suit is commenced; but it seems, that he cannot wholly pardon a public nuisance, while it continues such, because such Pardon would take away the only means of compelling a redress; yet it is said, that such a Pardon will save the party from any fine, to the time of the Pardon. *Plowd. 487: Keilw. 134: 12 Co. 29, 30: 3 Inst. 237: Vaugh. 333.*

It seems agreed, that the King can by no previous licence, Pardon, or dispensation, make an offence *dispunishable*, which is *malum in se*; as being either against the law of nature, or so far against the public good as to be indictable at Common Law; and that a grant of this kind, tending to encourage the doing of evil, which it is the chief end of government to prevent, is against the common good, therefore void. *Dav. 75: 5 Co. 35: 13 Co. 29: Vide 2 Hawk. P. C. c. 37: 3 H. 7, 15, pl. 30.*

Where a thing, in its own nature lawful, was made unlawful by Parliament, it was formerly taken as a general rule, that the King might dispense with it, as to a particular time or place, or person, so far as the public was concerned in it; unless such dispensation could not but be attended with an inconvenience, as the introducing a monopoly; or frustrating the end for which the law was made; as the licensing a particular person to import foreign cards or wines, &c. in which case it was commonly taken to be void; also, where a statute gave a particular interest, or right of action to the party grieved, it was always agreed, that no charter from the King could bar the right of the party, grounded on such statute; also where a statute was express, that the King's charter against the purport of it, though with the clause of *non obstante*, should be void; it seems to have been always generally agreed, that regularly no such clause could dispense with it. *2 Hawk. P. C. c. 37. § 28.*

It seems to have been agreed, that no dispensation of any statute, except the statutes of mortmain, was of any force without a clause of *non obstante*; neither is such clause now of any effect, for it is declared and enacted by *stat. 1 W. & M. st. 2. c. 2*, that no dispensation by *non obstante* of or to any statute, or any part thereof, be allowed; but that the same shall be held void, except a dispensation be allowed in such statute; but it is provided, that no charter, grant, or Pardon, granted before the 23d of October 1699, shall be any ways in-

validated by that act, but that the same shall be and remain of the same force, and no other, as if the said act had never been made. See this Dictionary, titles *King*, V. 3.

The King cannot by any charter bar any right of entry or action, real or personal, on contract, or for wrong done, or any legal interest, or benefit before vested in the Subject; therefore it seems clear, that he cannot bar any action on a statute by the party grieved, nor even a popular action commenced before his Pardon, nor a recognizance for the peace before it is forfeited. *Plowd.* 487: 2 *Roll. Abr.* 178: *Cro. Car.* 199: *Keilw.* 134: *Moor* 863.

The power of the Crown to pardon a forfeiture, and to grant restitution, can only be exercised when things remain *in statu quo*, but not so as to affect legal rights vested in third persons. *Rex v. Amery*, 2 *Term Reps.* K. B. 569.

Neither can the King pardon an appeal, except only where it is carried on at his suit, after a nonsuit of the party; therefore if a person attainted, on an appeal carried on at the suit of the party, get the King's Pardon, he must sue a *scire facias* against the appellant, before the Pardon shall be allowed. And if the appellant appear on the *scire facias*, he may pray execution notwithstanding the Pardon; but if the Sheriff return a *scire feci*, or two *nihils*, and the appellant appear not, on demand, or if he return the appellant dead, the appellee shall be discharged; but some have holden, that in this last case, a *scire facias* shall go against the heirs of the deceased. 2 *Hawk. P. C. c.* 37. § 35, 36.

But there is no need of any *scire facias* against the lord by escheat; because the Pardon no way tends to reverse the attainder whereon the title of escheat is founded. 2 *Hawk. P. C. c.* 37. § 37.

It hath been strongly holden, that the King may pardon the burning of the hand, on a conviction of manslaughter, on an appeal, as being no part of the judgment at the suit of the party; but collateral and exemplary punishment inflicted by the statute, and intended only by way of satisfaction to public justice; like the finding of sureties by one convicted on the statute against trespass in parks. But for this see 2 *Hawk. P. C. c.* 37. § 39.

In an appeal in which the defendant was found guilty of manslaughter, it was doubted whether the King could pardon the burning in the hand, and the defendant compounded with the appellant for forty marks. 4 *Comm.* 317, *n.* cites 3 *P. Wms.* 453.

II. First, a Pardon must be under the great seal. A warrant under the privy seal, or sign manual, though it may be a sufficient authority to admit the party to bail, in order to plead the King's Pardon when obtained in proper form, yet is not of itself a complete irrevocable Pardon. 5 *St. Tr.* 166, 173.

Next, it is a general rule, that wherever it may reasonably be presumed that the King is deceived, the Pardon is void. 2 *Hawk. P. C. c.* 37. § 8. Therefore any suppression of truth, or suggestion of falsehood, in a charter of Pardon, will vitiate the whole; for the King was misinformed. 3 *Inst.* 238.

General words have also a very imperfect effect in Pardons. A Pardon of all felonies will not pardon a conviction or attainder of felony; for it is presumed the King knew not of those proceedings; but the conviction or attainder must be particularly mentioned. 2 *Hawk.*

P. C. c. 37. § 8. And a Pardon of felonies will not include piracies; for that is no felony punishable at the Common Law. 1 *Hawk. P. C. c. 37. § 6, &c.*

It is also enacted by *stat. 13 R. 2. st. 2. c. 1*, that no Pardon for treason, murder, or rape, shall be allowed, unless the offence be particularly specified therein; and particularly in murder it shall be expressed, whether it was committed by laying in wait, assault, or malice prepense. Upon which *Coke* observes, that it was not the intention of the Parliament that the King should ever pardon murder, under these aggravations; and therefore they prudently laid the Pardon under these restrictions, because they did not conceive it possible that the King would ever excuse an offence by name, which was attended with such high aggravations. 3 *Inst. 236.* And it is remarkable enough; that there is no precedent of a Pardon in the register for any other homicide, than that which happens *se defendendo*, or *per infortunium*; to which two species the King's Pardon was expressly confined by the *stats. 2 E. 3. c. 2*; and *14 E. 3. c. 15*; which declare that no Pardon of homicide shall be granted, but only where the King may do it *by the oath of his Crown*, that is to say, where a man slayeth another in his own defence, or by misfortune. But the *stat. 13 Ric. 2. st. 2. c. 1*, before mentioned, enlarges by implication the royal power; provided the King is not deceived in the intended object of his mercy. And therefore Pardons of murder were always granted with a *non obstante* of the statute of King *Richard*, till the time of the Revolution; when the doctrine of *non obstantes* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the Court of King's Bench, that the King may pardon on an indictment of murder, as well as a subject may discharge an appeal. *Salk. 499.* Under these and a few other restrictions, it is a general rule, that a pardon shall be taken most beneficially for the Subject, and most strongly against the King.

A Pardon may also be *conditional*; that is, the King may extend his mercy upon what terms he pleases; and may annex to his bounty a condition either precedent or subsequent, on the performance whereof the validity of the Pardon will depend; and this by the Common Law. 2 *Hawk. P. C. c. 37. § 45.* Which prerogative is daily exerted in the Pardon of felons, on condition of being confined to hard labour for a stated time; or of transportation to some foreign country for life, or for a term of years; such transportation or banishment being allowed and warranted by the *habeas-corpus* act, *31 Car. 2. c. 2. § 14*; and both the imprisonment and transportation rendered more easy and effectual by *stats. 8 Geo. 3. c. 15*; *19 Geo. 3. c. 74*; *24 Geo. 3. c. 56*; *31 Geo. 3. c. 46.* See this Dictionary, title *Transportation*.

By the statute of *Gloucester*, *6 E. 1. cap. 9.* it is enacted, "That if it be found by the country, that a person tried for the death of a man, did it in his defence, or by misfortune, then, by the report of the justices to the King, the King shall take him to his grace, if it please him." 2 *Inst. 316.*

But it seems to be settled at this day, agreeable to the antient Common Law, in affirmance whereof this statute was made, that in such a case, or where one indicted of homicide *se defendendo* confesses the indictment, if the party cause the record to come into Chancery, the Chancellor will of course make him a Pardon, without speaking to the King, and that by such Pardon the forfeiture of goods may be

saved; for these words, "If it shall please the King," shall be taken as spoken only by way of reverence to him, and not intended to make such a Pardon discretionary. But if the party be found to have fled, it is made a *quære*, if the Pardon save the forfeiture of the flight, for that is not grounded on the homicide, but on the contempt of law. 2 *Hawk. P. C. c. 37. § 2.*

If an approver convict all the appellees, whether by battel or verdict, the King, *ex merito justitiæ*, ought to pardon him as to his life, and also give him his wages from the time of appeal, to the time of conviction. 3 *Inst. 139; 2 Hawk. P. C. c. 25. § 27; 2 Hale's Hist. P. C. 233.*

As to persons entitled to pardons on discovering their accomplices, see *stats. 4 & 5 W. & M. c. 8; 6 & 7 W. & M. c. 17; 10 & 11 W. 3. c. 23; 5 Ann. c. 31, &c.*; and this Dictionary, titles *Accessaries; Receivers.*

It has been already mentioned as a general rule, that wherever it appears, by the recital of the Pardon, that the King was misinformed, or not rightly apprized, both of the heinousness of the crime, and also how far the party stands convicted upon record, the Pardon is void, upon a presumption that it was gained from the King by imposition. See also *Yel. 43, 47; Cro. Jac. 18, 34, 548; 2 Roll. Abr. 188; Dyer 352. pl. 26; Raym. 13; 1 Sid. 41; 3 Inst. 338.* And on this ground it hath been holden, that the Pardon of a person convicted by verdict of felony, is void unless it recite the indictment and conviction; also it hath been questioned, if the Pardon of a person barely indicted of felony be good, without mentioning the indictment; but it hath been adjudged, that such a defect is saved by the words *sive indictatus sive non.* 2 *Hawk. P. C. c. 37. § 8.*

Antiently a Pardon of all felonies included all treasons as well as felonies; and it seems to be taken for granted in many books, that such a general Pardon is, even at this day, pleadable to any felony, except murder, rape, and piracy; and that the only reason why it may not also be pleaded to murder and rape is, because *stat. 13 Rich. 2. st. 2. c. 1.* requires an express mention of them; and that the only reason why it is not pleadable to piracy is because it is a felony by the Civil Law. 1 *Hale's Hist. P. C. 466; 2 Hale's Hist. P. C. 45; See ante; and 2 Hawk. P. C. c. 37. § 9.*

No pardon of felony shall be carried beyond the express purport of it; therefore if the King reciting an attainder of robbery, pardon the execution, he thereby neither pardons the felony itself, nor any other consequence of it, besides the execution. 6 *Co. 13; 2 Hawk. P. C. c. 37. § 12.*

It was formerly adjudged, that murder might be pardoned under the general description of a felonious killing, with a clause of *non obstante.* 1 *Sid. 366; 1 Show. 283; Keling 24; 3 Mod. 37.* And Pardons of manslaughter still remain as they were at Common Law before the doctrine of *non obstante* was exploded; therefore the Pardon of the felonious killing of *J. S.* may be pleaded to an indictment of manslaughter in killing him; but where such a Pardon is pleaded to a coroner's inquest of manslaughter, the Court may refuse to allow it, till the fact be found manslaughter by a jury directed by a higher Court. 2 *Keble. 363, 415; Keling 24; 2 Jon. 56.*

If a general act expressly pardon petit treason, and except murders, it cannot be avoided by indicting a person guilty of petit treason

for murder only, omitting the word *proditoriè*; for the less offence being included in the greater is pardoned by the Pardon of it; therefore such an exception of murder is to be intended of such murder only as is specially so called, and doth not amount to petit treason. *Dyer* 50. *fil.* 4: 235. *fil.* 19: 6 *Co.* 13.

Neither doth the exception of murder, in a general act of Pardon of all felonies, extend to *felo de se*: for though this offence be in strictness murder, yet in common speech, according to which statutes are commonly expounded, it is generally understood as a distinct offence, the word murder seeming *primâ facie* to import the murder of another. 1 *Lev.* 8, 120: 1 *Sid.* 150: 1 *Keb.* 66, 548.

It is said that a general act of Pardon of all felonies, misdemeanors, and other things done before such a day, pardons a homicide from a wound before the day, whereof the party died not till after; because the stroke being pardoned, the effects of it are consequently pardoned. *Plowd.* 401, *Cole's case*: 1 *Hale's Hist. P. C.* 426: *Dyer* 99. *fil.* 65.

It is said, that a Pardon of all misprisions, trespasses, offences, and contempts, will pardon a contempt in making a false return, and a striking in *Westminster-Hall*, and barratry, and even a *præmunire*; also it is laid down in general, that it will pardon any crime not capital. 1 *Lev.* 106: 1 *Sid.* 211: 2 *Mod.* 52: *vide* 2 *Hale's Hist. P. C.* 252: *Dyer* 308. *a.*

III. A PARDON by act of Parliament is more beneficial than by the King's charter; for a man is not bound to plead it, but the Court must, *ex officio*, take notice of it. *Fost.* 43. Neither can a man lose the benefit of it by his own *laches* or negligence, as he may of the King's charter of Pardon. 2 *Hawk. P. C. c.* 37. § 64. The King's charter of Pardon must be specially pleaded, and that at a proper time; for if a man is indicted, and has a Pardon in his pocket, and afterwards puts himself upon his trial by pleading the general issue, he has waived the benefit of such Pardon. *Ibid.* § 59. But if a man avails himself thereof, as soon as by course of law he may, a Pardon may either be pleaded upon arraignment, or in arrest of judgment, or in the present stage of proceedings, in bar of execution. By *stat.* 10 *E.* 3. *c.* 2. no Pardon of felony could be allowed, unless the parties found six sureties for their good behaviour before the Sheriff and Coroners of the county. *Salk.* 499. But that statute is repealed by the *stat.* 5 & 6 *W. & M. c.* 13; which, instead thereof, gives the judges of the Court a discretionary power to bind the criminal pleading such Pardon, to his good behaviour, with two sureties, for any term not exceeding seven years. See title *Larceny*.

A Pardon, if pleaded, must be averred to be under the Great Seal: except a Statute Pardon, or what amounts thereto. 1 *Bos. & Pul.* 199.

IV. THE effect of such Pardon by the King is to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence, for which he obtains his Pardon; and not so much to restore his former, as to give him a new credit and capacity. But nothing can restore or purify the blood when once corrupted, if the Pardon be not allowed till after attainder, except the high and transcendant power of Parliament. Yet if a person attained re-

ceives the King's Pardon, and afterwards hath a son, that son may be heir to his father, because the father, being made a new man, might transmit new inheritable blood; though had he been born before the Pardon, he could never have inherited at all. See title *Attainder*.

A Pardon will not only discharge any suit in the Spiritual Court *ex officio*, but also any suit in such Court *ad instantiam partis pro reformatione morum*, or *salute animæ*; as for defamation, or laying violent hands on a clerk, &c. See 5 *Co.* 51: *Latch.* 190: *Cro. Eliz.* 684: *Hob.* 81: *Cro. Jac.* 335: 2 *Hawk. P. C. c.* 37. § 41, &c.

If a person be imprisoned on an *excommunicato capiendo* for non-payment of costs, and the King pardons all contempts, it is said, that he shall be discharged without any *scire facias* against the party, and that the party must begin anew to compel payment of costs; because the imprisonment was grounded on the contempt, which is wholly pardoned. 1 *Jon.* 227: 2 *Roll. Abr.* 178: *Cro. Jac.* 159: 8 *Co.* 68, 69.

But no Pardon will discharge a suit in the Spiritual Court, any more than in a temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like; also it is agreed, that after costs are taxed in a suit, in such Court, at the prosecution of the party, whether for a matter of private interest, or *pro reformatione morum*, or *pro salute animæ*, or for defamation, &c. they shall not be discharged by a subsequent Pardon. 5 *Co.* 51: *Latch.* 190: *Cro. Car.* 46, 7. And with respect to costs, see 2 *Roll. Abr.* 304. *Noy* 85; *Latch.* 155.

For more learning on this subject, see 3 *New Abr.* title *Pardon*.

PARDONERS, Persons who carried about the Pope's indulgences, and sold them to any who would buy them. *Ann.* 22 *H.* 8.

PARENT, [*parens.*] A father or mother; but generally applied to the father; Parents have power over their children by the law of nature, and the divine law; and by those laws they must educate, maintain, and defend their children. *Wood's Inst.* 63. The Parent or father hath an interest in the profits of the children's labour while they are under age, if they live with and are maintained by him; but the father hath no interest in the estate of a child, otherwise than as his guardian. *Ibid.* The eldest son is heir to his father's estate at Common Law; and if there are no sons, but daughters, the daughters shall be heirs, &c. And there being a reciprocal interest in each other, Parents and children may maintain the suits of each other, and justify the defence of each other's person. 2 *Inst.* 564.

A Parent may lawfully correct his child being under age in a reasonable manner: for this is for the benefit of his education. The consent or concurrence of the Parent to the marriage of a child under age is necessary: but these and all other powers of a Parent cease in law, when a child arrives at the age of twenty-one. See 1 *Comm. c.* 16. and this Dictionary, titles *Age*; *Bastard*; *Poor*; *Marriage*; *Guardian*; and other apposite titles.

PARENTELA, or DE PARENTELA SE TOLLERE, To renounce his kindred, which was done in open Court before the Judge and in the presence of twelve men, who made oath, that they believed it was done lawfully, and for a just cause. We read it in the laws of *H.* 1. *cap.* 88. See *Vill.*

PARISH, [*parochia.*] Did antiently signify what we now call the *diocese* of a bishop: but at this day it is the circuit of ground in which the people who belong to one church do inhabit, and the particular

charge of a secular priest. It is derived from the *Saxon* *Preostscyre* *Preost scyre*; which signifies the precinct of which the priest had the care, in *English* priest-shire.

How antient the division of parishes is, may at present be difficult to ascertain; for it seems to be agreed on all hands, that in the early ages of Christianity in this island, Parishes were unknown, or at least signified the same that a diocese does now. There was then no appropriation of ecclesiastical dues to any particular church: but every man was at liberty to contribute his tithes to whatever priest or church he pleased, provided only that he did it to some: or, if he made no special appointment or appropriation thereof, they were paid into the hands of the bishop, whose duty it was to distribute them among the clergy, and for other pious purposes, according to his own discretion. 1 *Comm. Introd.* § 4.

Camden (in his *Britannia*) says, *England* was divided into Parishes by archbishop *Honorius* about the year 630. Sir *Henry Hobart* lays it down, that Parishes were first erected by the council of *Lateran*, which was held *anno Domini* 1179. Each widely differing from the other, and both of them perhaps from the truth; which will probably be found in the medium between the two extremes. For Mr. *Selden* has clearly shewn, (of *Tithes*, c. 9.) that the clergy lived in common without any division of Parishes, long after the time mentioned by *Camden*. And it appears from the *Saxon* laws that Parishes were in being long before the date of that council of *Lateran*, to which they are ascribed by *Hobart*. 1 *Comm. ubi sup.*

We find the distinction of Parishes, nay, even of mother churches, so early as in the laws of King *Edgar*, about the year 970. Before that time the consecration of tithes was in general arbitrary; that is, every man paid his own (as before observed) to what church or Parish he pleased. But this being liable to be attended with either fraud, or at least caprice, in the persons paying, and with either jealousies or mean compliances in such as were competitors for receiving them; it was ordered by the law of King *Edgar*, (c. 1.) That “*dentur omnes decimæ primariæ ecclesiæ ad quam parochia pertinet.*” However, if any thane, or great lord, had a church within his own demesnes, distinct from the mother church, in the nature of a private chapel; then, provided such church had a cemetery or consecrated place of burial belonging to it, he might allot one third of his tithes for the maintenance of the officiating minister: but, if it had no cemetery, the thane must himself have maintained his chaplain by some other means; for in such case all his tithes were ordained to be paid to the *primariæ ecclesiæ* or mother church. 1 *Comm. ubi sup.*

This proves that the kingdom was then universally divided into Parishes; which division happened probably not all at once, but by degrees. For it seems pretty clear and certain, that the boundaries of Parishes were originally ascertained by those of a manor or manors: since it very seldom happens that a manor extends itself over more Parishes than one, though there are often many manors in one Parish. But at present the boundaries of the one afford no inference or evidence whatever of the boundaries of the other. The lords, as Christianity spread itself, began to build churches upon their own demesnes or wastes, to accommodate their tenants in one or two adjoining lordships; and, in order to have divine service regularly performed therein, obliged all their tenants to appropriate their tithes to the maintenance of the one officiating minister, instead of leaving them

at liberty to distribute them among the clergy of the diocese in general: and this tract of land, the tithes whereof were so appropriated, formed a distinct Parish: which will account well enough for the frequent intermixture of Parishes one with another. For if a lord had a parcel of land detached from the main of his estate, but not sufficient to form a Parish of itself, it was natural for him to endow his newly-erected church with the tithes of those disjointed lands; especially if no church was then built in any lordship adjoining to those outlying parcels. Thus Parishes were gradually formed, and Parish churches endowed with the tithes that arose within the circuit assigned. But some lands, either because they were in the hands of irreligious and careless owners, or were situate in forests and desert places, or for other now unsearchable reasons, were never united to any Parish, and therefore continue to this day extraparochial; and their tithes are now by immemorial custom payable to the King instead of the bishop, in trust and confidence that he will distribute them for the general good of the church. 2 *Inst.* 647: 2 *Rep.* 44: *Cro. Eliz.* 512. Yet extraparochial wastes and marsh lands when improved and drained, are by the statute 17 *Geo.* 2. c. 37. to be assessed to all parochial rates in the Parish next adjoining. 1 *Comm. ubi sup.* and see 1 *Wils.* 182.

Lord *Holt* held, that Parishes were instituted for the ease and benefit of the people, not of the parson; and the reason why parishioners must come to their Parish church is, because having charged himself with the cure of their souls, he might be enabled to take care of that charge. 3 *Salk.* 88, 89. A Parish may comprise many vills; but generally it shall not be accounted to contain more than one, except the contrary be shewn, because most Parishes have but one vill within them. *Hil.* 23 *Car.* 1. *B. R.* And it shall not be intended that there is more than one Parish in a city, if it be not made to appear; for some cities have but one Parish. *Ibid.* Where there are several vills in a Parish, they may have peace-officers, and overseers of the poor, for every particular vill: and an antient vill in a Parish, that time out of mind hath had a church of its own, and churchwardens and parochial rights, being reputed a Parish, is a Parish within the *stat.* 43 *Eliz.* c. 2. to provide for its own poor; and shall not pay to the poor of the Parish wherein it lies. *Cro. Car.* 92, 384, 396. But to make a vill a reputed Parish within *stat.* 43 *Eliz.* c. 2. it must have a parochial chapel, chapelwardens and sacraments at the time that statute was made. 2 *Salk.* 501. Parishes in reputation are within that statute, especially when it has been the constant usage of such Parishes to choose their own overseers; who may distrain for a poor-tax, &c. 2 *Roll. Rep.* 160: 2 *Nels. Abr.* 1235. See titles *Poor; Overseers; Vill.*

Money given by will to a Parish, shall be to the poor of the Parish. *Chanc. Rep.* 134. If a highway lie in a Parish, the Parish is obliged to repair it; and it is the most convenient and equal for the parishioners in every Parish, to repair the ways within it, if they are able. 2 *Lil.* 272. See title *Highways.*

PARISH-CLERK. In every parish the parson, vicar, &c. hath a Parish Clerk under him, who is the lowest officer of the church. They were formerly clerks in orders, and their business was at first to officiate at the altar, for which they had a competent maintenance, by offerings; but now they are laymen, and have certain fees with the parson, on christenings, marriages, burials, &c. besides wages, for their maintenance. *Count. Pars. Comfan.* 83, 84. They are to be twenty years

of age at least, and known to be of honest conversation, sufficient for their reading, singing, &c. And their business consists chiefly in responses to the minister, reading lessons, singing psalms, &c. And in the large parishes of *London* some of them have deputies, to despatch the business of their places, which are more gainful than common rectories. The law looks upon them as officers for life; they are regarded by the Common Law as persons who have freeholds in their offices; and therefore though they may be punished, yet they cannot be deprived, by ecclesiastical censures. 1 *Comm.* 395. And they are generally appointed by the minister, unless there is a custom for the parishioners or churchwardens to choose them; in which case the canon cannot abrogate such custom; and when chosen it is to be signified to, and they are to be sworn into their office by, the archdeacon. *Cro. Car.* 589: *Can.* 91. And if such custom appears, the Court of *B. R.* will grant a *Mandamus* to the archdeacon to swear him in, for the establishment of the custom turns it into a temporal or civil right. 1 *Comm.* 395. He may make a deputy without licence of the Ordinary; *Strange* 942; and cannot sue in the Spiritual Court for fees as being a temporal officer. 2 *Strange* 1108.

PARISHIONER, [*parochianus*.] An inhabitant of or belonging to any parish, lawfully settled therein. Parishioners are compellable to put things in decent order; but the judgment of the majority is the only rule for the degrees of that decency; and the Court inclined that a rate for that purpose is binding; as for moving the communion-table out of the body of the church into the chancel, or raising it higher, &c. 7 *Mod.* 70.

Parishioners have a right to view parish books. 11 *Mod.* 134.

Parishioners are a body politic to many purposes; as to vote at a vestry if they pay scot and lot; and they have a sole right to raise taxes for their own relief, without the interposition of any superior Court; may make by-laws to mend the highways, and to make banks to keep out the sea, and for repairing the church, and making a bridge, &c. or any such thing for the public good: and by *stat.* 3 & 4 *W. 3. c.* 11. to tax and levy poor-rates, and to make and maintain fire-engines; and by *stat.* 9 *Geo. 1. c.* 28. for purchasing workhouses for the poor. *Arg.* 8 *Mod.* 354. See further, titles *Churchwardens*; *Overseers*; *Poor*; *Vestry*.

PARISH OFFICERS. Divers persons are exempted from serving parish offices on account of their professions, *viz.* Physicians and surgeons, apothecaries, dissenting teachers, and persons having prosecuted any felon to conviction, &c. See this Dict. titles *Churchwarden*; *Constable*; *Reward*.

PARK, Lat. *parcus*, Fr. *parque*, i. e. *locus inclusus*.] A large quantity of ground inclosed and privileged for wild beasts of chase, by the King's grant or by prescription. 1 *Inst.* 233.

Manwood defines a Park to be a privileged place for beasts of venery, and other wild beasts of the forest and chase, *tam sylvestres, quam campestris*: and differs from a chase or warren, in that it must be inclosed; for if it lies open, it is good cause of seizure into the King's hands, as a thing forfeited; as a free chase is, if it be inclosed; besides, the owner cannot have an action against such as hunt in his Park, if it lies open. *Manw. Forest Laws*; *Cromp. Jurisd.* 148. No man can erect a Park without licence under the broad seal; for the Common Law does not encourage matter of pleasure, which brings no profit to the commonwealth. But there may be a Park in reputation,

erected without lawful warrant; and the owner may bring his action against persons killing his deer. *Wood's Inst.* 207.

To a Park three things are required: 1. A grant thereof; 2. Inclosures by pale, wall, or hedge; 3. Beasts of a Park, such as the buck, doe, &c. And where all the deer are destroyed, it shall no more be accounted a Park; for a Park consists of vert, venison, and inclosure; and if it is determined in any of them, it is a total disparking. *Cro. Car.* 59, 60.

The King may by letters patent dissolve his Park. *2 Lil. Abr.* 273.

Parks as well as chases are subject to the Common Law, and are not to be governed by the forest laws. *4 Inst.* 314.

Pulling down Park walls or pales, the offenders shall be liable to the same penalty as for killing deer, &c. See *Deer-stealers*.

A *Park*, says *Blackstone*, is an inclosed chase extending only over a man's own grounds. The word *Park*, indeed, properly signifies an inclosure; but yet it is not every field or common which a gentleman pleases to surround with a wall or paling, and to stock with a herd of deer, that is thereby constituted a legal Park; for the King's grant, or at least immemorial prescription, is necessary to make it so. *1 Inst.* 233; *2 Inst.* 199; *11 Rep.* 86. Though now the difference between a real Park, and such inclosed grounds, is in many respects not very material; only that it is unlawful, at *Common Law*, for any person to kill any beasts of Park or chase, except such as possess the franchises of forest, chase, or Park. *2 Comm. c.* 3. *p.* 38. But this latter doctrine is strenuously combated by Mr. *Christian* in his Annotations on the Commentaries. See this Dictionary, title *Game*; as also titles *Forest*; *Chase*; *Warren*, &c.

PARK-BOTE, Signifies to be quit of inclosing a Park, or any part thereof. *4 Inst.* 308.

PARLE HILL, *Spelman* gives this description of it; *Collis valle plerumque munitus, in loco campestri, ne insidiis exponatur; ubi convenire olim solebant centurie aut vicine incolæ ad lites inter se tractandas & terminandas: Scotis reor Grith hail, q. Mons pacificationis, cui asyli privilegia concedebantur: & in Hibernia frequentes vidimus, the Parle and Parling Hills.* *Spelm. Gloss.*

PARLIAMENT.

PARLIAMENTUM. The derivation of the word is uncertain; and its *etymon*, if we were to follow the imaginations of various authors, subject even to some degree of ridicule. It seems properly to be derived from the French *Parler*, to speak. Freedom of speech being of the essence of representation, and without which such a National Council can have no effect. The word (which was first applied to general assemblies of the States under *Louis VII.* in *France*, about A. D. 1150,) was not used in *England* till the reign of *Hen. III.* and the first mention of it, in our statute law, is in the preamble to *stat. Westm.* 1. 3 *Ed.* 1. A. D. 1272. When therefore it is said *Parliaments* met before that æra, it is by a licence of speech considering every national assembly as a Parliament. See *1 Comm. c.* 2. *p.* 147; and the notes there.] Parliament may be defined to be

THE LEGISLATIVE BRANCH of the Supreme Power of GREAT BRITAIN; consisting of the King, the Lords Spiritual and Temporal; and the Knights, Citizens, and Burgesses, Representatives of the Commons of the Realm; in Parliament assembled.

- I. *Of the Antiquity and Origin of Parliament.*
- II. *The Manner and Time of its assembling.*
- III. *Its constituent Parts.*
- IV. *The Laws and Customs of Parliament as an aggregate Body.*
 1. *As relates to its Power and Jurisdiction.*
 2. *As relates to the Privileges of its Members; and see this Dict. titles Peers; Privilege.*
- V. *The Laws and Customs of the House of LORDS.*
 1. *As Members of Parliament.*
 2. *In their Judicial Capacity; and see ante IV. 1; and this Dict. titles Peers; Privilege.*
- VI. *The Laws and Customs of the House of COMMONS.*
 - (A) *As relates to levying Taxes.*
 - (B) *As relates to Election of Members to serve in Parliament.*

And herein,

 1. *Of the Qualifications of Electors;*
(a) *in Counties; (b) in Cities, &c.*
 2. *Of the Qualifications of the Elected.*
 3. *Proceedings at Elections; wherein of the Duty of returning Officers, and Proceedings, before Election-Committees.*
- VII. *The Method of Business, and particularly in the passing of Statutes in both Houses; and see this Dictionary, title Statute.*
- VIII. *Of the Adjournment, Prorogation, and Dissolution of Parliaments.*

I. SOME authors say, that the antient Britons had no such assemblies, but that the Saxons had: which may be collected from the laws of King Ina, who lived about the year 712. And William the First, called the Conqueror, having divided this land among his followers, so that every one of them should hold their lands of him *in capite*, the chief of these were called *Barons*, who thrice every year assembled at the King's Court, *viz.* at *Christmas, Easter, and Whitsuntide*, among whom the King used to come in his royal robes, to consult about the public affairs of the kingdom. This King called several Parliaments, wherein it appears, that the freemen or Commons of *England* were also there, and had a share in making laws: he by settling the Court of Parliament so established his throne, that neither *Briton, Dane, nor Saxon* could disturb his tranquillity, the making of his laws were by act of Parliament, and the accord between *Stephen* and him was made by Parliament; though all the times since have not kept the same form of assembling the States. *Doddridge's Antiq. Parliament.*

There was a Parliament before there were any barons; and if the Commons do not appear, there can be no Parliament; for the knights, citizens, and burgesses represent the whole Commons of *England*, but the peers only are present for themselves, and none others. *Doddr.*

Coke affirms, that many Parliaments were held before the Conquest; and produces an instance of one held in the reign of *Alfred*: he likewise gives us a conclusion of a Parliament holden by *Athlestan*, where mention is made, that all things were enacted in the great synod, or council at *Grately*, whereat was archbishop *Wolfehelme*, with all the noblemen and wise men, whom the King called together. 1 *Inst.* 110. It is apparent, (says Mr. *Prynne*,) from all the precedents before the time of the Conquest, that our pristine synods and councils were nothing else but Parliaments; that our Kings, nobles, senators, aldermen, wise men, knights and Commons, were present and voting in them as members and judges: And Sir *Henry Spelman*, *Camden*, and other writers, prove the Commons to be a part of the Parliament in the time of the *Saxons*, but not by that name, or elected as consisting of knights, citizens, and burgesses. *Pryn*, *Sovereign Pow. Parliament.*

As to the origin of the present House of Commons, our authors of antiquity vary very much; many are of opinion that the Commons began not to be admitted as part of the Parliament, upon the footing they are now, until the 49 *H.* 3. because the first writ of summons of any knights, citizens, and burgesses, is of no antienter date than that time. But the Great Charter in the 17th year of King *John*, (about which time the distinction of *barones majores* and *minores* is supposed to have begun,) was made *per Regem, barones, & liberos homines totius regni.*

Selden says, that the borough of *St. Albans* claimed by prescription in the Parliament, 8 *Ed.* II. to send two burgesses to all Parliaments, as in the reigns of *Edw.* I. and his progenitors, which must be the time of King *John*; and so before the reign of King *Henry* II. And in the reign of *Henry* V. it was declared and admitted, that the Commons of the land were ever a part of the Parliament. *Selden's Tit. Hon.* 709: *Polydore Virgil Hollinshed*, *Speed*, and others mention that the commons were first summoned at a Parliament held at *Salisbury*, 16 *Hen.* I. Sir *Walter Raleigh*, in his treatise of the *Prerogative of Parliaments*, thinks it was anno 18 *Hen.* I. And Dr. *Heylin* finds another beginning for them, viz. in the reign of King *Hen.* II.

On this part of the subject *Blackstone* thus expresses himself; and in his Commentaries will be found, as on other subjects, the summary of former opinions, illuminated by the powerful mind of that great Commentator. See 1 *Comm.* c. 2.

The original, or first institution, of Parliaments is one of those matters which lie so far hidden in the dark ages of antiquity, that the tracing of it out is a thing equally difficult and uncertain. But it is certain, that long before the introduction of the *Norman* language into *England*, all matters of importance were debated and settled in the great councils of the realm; a practice which seems to have been universal among the northern nations; particularly the *Germans*, and carried by them into all the countries of Europe, which they overran at the dissolution of the *Roman Empire.*

With us in *England* this general council hath been held immemorably, under the several names of *Michel Synoth*, or great council; *Michel Gemote*, or great meeting; and more frequently *Wittena Gemote*, or the meeting of wise men. It was also styled in Latin, *Commune concilium regni*; *Magnum concilium*; *Regis curia magna*; *Conventus magnatum, vel procerum*; *Assisa generalis*; and sometimes *Communitas regni Angliæ.* *Glan.* l. 13. c. 32: l. 9. c. 10: *Pref.* 9 *Rep:*

2 *Inst.* 526. We have instances of its meeting to order the affairs of the kingdom, to make new laws, and to mend the old; or as *Fleta* l. 2. c. 2. expresses it, "*novis injuriis emeris nova constituere remedia;*" so early as the reign of *Ina*, King of the *West Saxons*; *Offa*, King of the *Mercians*; and *Ethelbert*, King of *Kent*, in the several realms of the heptarchy. And, after their union, the *Mirror*, c. 1. § 3. informs us, that King *Alfred* ordained for a perpetual usage, that these councils should meet twice in the year, or oftener, if need be, to treat of the government of God's people; how they should keep themselves from sin, should live in quiet, and should receive right. Our succeeding *Saxon* and *Danish* monarchs held frequently councils of this sort, as appears from their respective codes of laws; the titles whereof usually speak them to be enacted, either by the King with the advice of his *Wittena-gemote*, or wise men, as "*hæc sunt instituta, quæ Edgarus rex consilio sapientum suorum instituit;*" or to be enacted by these sages with advice of the King, as, "*hæc sunt judicia, quæ sapientes consilio regis Ethelstani instituerunt;*" or lastly, to be enacted by them both together, as, "*hæc sunt institutiones, quas rex Edmundus, et episcopi sui, cum sapientibus suis instituerunt.*"

There is also no doubt but these great councils were occasionally held under the first princes of the *Norman* line. *Glanvil*, who wrote in the reign of *Henry II.* speaking of a particular amount of an amercement in the Sheriff's Court, says, it had never yet been ascertained by the General Assises or Assembly, but was left to the custom of particular counties. *Glanv.* l. 9. c. 10. Here the general assise is spoken of as a meeting well known, and its statutes or decisions are put in a manifest contradistinction to custom, or the common law. And in *Edward III.*'s time, an act of Parliament, made in the reign of *William* the Conqueror, was pleaded in the case of the abbey of *St. Edmund's Bury*, and judicially allowed by the Court. *Year-Book*, 21 *E.* 3. c. 60.

Hence it indisputably appears, that Parliaments or general councils are coeval with the kingdom itself. How those Parliaments were constituted and composed is another question, which has been matter of great dispute among our learned antiquaries; and particularly whether the Commons were summoned at all; or if summoned, at what period they began to form a distinct assembly. It is however generally agreed, that in the main the constitution of Parliament, as it now stands, was marked out so long ago as the seventeenth year of King *John*, A. D. 1215, in the great charter granted by that prince; wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons, personally; and all other tenants in chief under the Crown, by the sheriff and bailiffs; to meet at a certain place, with forty days' notice, to assess aids and scutages, when necessary. And this constitution has subsisted, in fact, at least from the year 1266, 49 *Hen. III.*; there being still extant writs of that date, to summon knights, citizens, and burgesses to Parliament; the former of which may be seen in *Elsynge*, c. 1. § 2.

In fine, Parliament is the highest and most honourable, and absolute court of justice in *England*; consisting of the King, the Lords of Parliament, and the Commons; The Lords being divided into spiritual and temporal; and the Commons divided into knights of shires or counties; citizens out of cities; and burgesses from boroughs; the words of the old *Latin* writ to the sheriff for the election, being *Duos*

milites gladiis cinctos magis idoneos & discretos comitatús tui; & de quâlibet civitate comitatús tui duos cives; & de quolibet burgo duos burgenses, de discretioribus & magis sufficientibus, &c. 1 Inst. 109.

II. THE Parliament is regularly to be summoned by the King's writ or letter issued out of Chancery, by advice of the Privy Council, at least forty days before it begins to sit. This is a provision of the *Magna Carta* of King John: *Faciemus summoneri, &c. ad certum diem, scilicet ad terminum quadraginta dierum, ad minus; et ad certum locum. Black. Mag. Ch. Joh. c. 14.* It is enforced by *stat. 7 & 8 W. 3. c. 25.* which enacts that there shall be forty days between the teste and the return of the writ of summons. This time is now, by practice, generally extended to 50 days or more, in consequence of the union with *Scotland* and *Ireland*. The term of 50 days is mentioned in the act of union with *Scotland* (*5 Ann. c. 8. Art. 22.*) as the period to be allowed by proclamation for assembling the first Parliament of *Great Britain*. See *2 Hats. 235.*

It is a branch of the royal prerogative, that no Parliament can be convened by its own authority; [meaning by the authority of the Lords and Commons only, who in common parlance, though not in strictness of law, are considered as the Parliament;] or by the authority of any, except the King alone. And this prerogative is founded upon a very good reason; for supposing the Lords and Commons had a right to meet spontaneously without being called together, it is impossible to conceive that all the members, and each of the Houses, would agree unanimously upon the proper time and place of meeting; and if half of the members met, and half absented themselves, who shall determine which is really the legislative body, the part assembled, or that which stays away? It is therefore necessary that the Parliament should be called together at a determinate time and place; and highly becoming its dignity and independence, that it should be called together by none but one of its own constituent parts: and of the three constituent parts, this office can only appertain to the King, as he is a single person, whose will may be uniform and steady; the first person in the nation, being superior to both Houses in dignity; and the only branch of the Legislature that has a separate existence, and is capable of performing any act at a time when no Parliament is in being. Nor is it an exception to this rule, that by some modern statutes, on the demise of a King or Queen, if there be then no Parliament in being, the last Parliament revives, and it is to sit again for six months, unless dissolved by the successor; for this revived Parliament must have been originally summoned by the crown.

It is true, that by *stat. 16 Car. 1. c. 1.* it was enacted, that, if the King neglected to call a Parliament, for three years, the Peers might assemble and issue out writs for choosing one; and, in case of neglect of the Peers, the constituents might meet and elect one themselves. But this, if ever put in practice, would have been liable to all the inconveniences just stated; and this act itself was deemed so highly detrimental and injurious to the royal prerogative, that it was repealed by *stat. 16 Car. 2. c. 1.* From thence therefore no precedent can be drawn; and in fact it is an exception which fully proves the rule.

It is also true, that the Convention Parliament, which restored King *Charles* the Second, met above a month before his return; the

Lords by their own authority, and the Commons in pursuance of writs issued in the name of the keepers of the liberty of *England* by authority of Parliament; and that the said Parliament sat till the twenty-ninth of *December*, full seven months after the Restoration, and enacted many laws, several of which are still in force. But this was for the necessity of the thing, which supersedes all law; for if they had not so met, it was morally impossible that the kingdom should have been settled in peace. And the first thing done after the King's return was to pass an act, declaring this to be a good Parliament, notwithstanding the want of the King's writs. See *stat. 12 Car. 2. c. 1.* So that as the royal prerogative was chiefly wounded by their so meeting, and as the King himself, who alone had a right to object, consented to waive the objection, this cannot be drawn into an example in prejudice of the rights of the Crown. Besides, we should also remember, that it was at that time a great doubt among the lawyers, whether even this healing act made it a good Parliament; and held by very many in the negative; though it seems to have been too nice a scruple. 1 *Sid. 1.* And, perhaps out of abundant caution, it was thought necessary to confirm its acts in the next Parliament, by *stat. 13 Car. 2. cc. 7, 14.*

It is likewise true, that at the time of the Revolution, A. D. 1688, the Lords and Commons by their own authority, and upon the summons of the Prince of *Orange* (afterwards King *William*), met in a Convention, and therein disposed of the Crown and Kingdom. But it must be remembered, that this assembling was upon a like principle of necessity as at the Restoration; that is, upon a full conviction that King *James II.* had abdicated the government, and that the throne was thereby vacant; which supposition of the individual members was confirmed by their concurrent resolutions when they actually came together. And in such a case as the palpable vacancy of the throne, it follows *ex necessitate rei*, that the form of the royal writs must be laid aside, otherwise no parliament can ever meet again. For let us put another possible case, for the sake of argument, that the whole royal line should at any time fail and become extinct, which would indisputably vacate the throne; in this situation it seems reasonable to presume, that the body of the nation, consisting of Lords and Commons, would have a right to meet and settle the government; otherwise there must be no government at all. And upon this, and no other principle, did the Convention in 1688 assemble. The vacancy of the throne was precedent to their meeting, without any royal summons, not a consequence of it. They did not assemble without writ, and then make the throne vacant by the King's abdication; but the throne being previously vacant by the King's abdication, they assembled without writ, as they must do if they assembled at all. Had the throne been full, their meeting would not have been regular; but, as it was really empty, such meeting became absolutely necessary. And accordingly it is declared by *stat. 1 W. & M. st. 1. c. 1.* that this convention was really the two Houses of Parliament; notwithstanding the want of writs or other defects of form. So that notwithstanding these two capital exceptions, which were justifiable only on a principle of necessity, (and each of which by the way induced a revolution in the government,) the rule laid down is, in general, certain, that the King only can convoke a Parliament. And this by the antient statutes

of the realm, 4 E. 3. c. 14: 36 E. 3. c. 10. he is bound to do *every year, or oftener, if need be*. Not that he is, or ever was, obliged by these statutes to call a *new* Parliament every year, but only to permit a Parliament to sit annually for the redress of grievances, and dispatch of business, *if need be*. These last words are so loose and vague, that such of our monarchs as were inclined to govern without Parliaments, neglected the convoking them sometimes for a very considerable period, under pretence that there was no need for them.

Mr. *Granville Sharp*, in a treatise published some years ago, argued ingeniously against this construction of the *stat. 4 E. 3*; and maintained that the words *if need be*, referred only to the preceding word *oftener*; so that the true signification was, that a Parliament should be held once every year at all events; and, if there should be any need to hold it oftener, then, more than once. The contemporary records of Parliament, in some of which it is so expressed without any ambiguity, prove beyond all controversy that this is the true construction. See *Christian's* note on 1 *Comm. c. 2. p. 153*.

To remedy the evil of discontinuing Parliaments it was enacted, that the sitting and holding of them shall not be intermitted above three years at the most. And by *stat. 1 W. & M. st. 2. c. 2*, it is declared to be one of the rights of the people, that for redress of all grievances, and for the amending, strengthening, and preserving the laws, Parliaments ought to be held *frequently*. This indefinite frequency is again reduced to a certainty by *stat. 6 W. & M. c. 2*; which enacts, as the statute of *Charles* the Second had done before, that a new Parliament shall be called within three years after the determination of the former.

Though the *stat. 6 W. & M. c. 2*, confirms the statute 16 *Car. 2. e. 1*, in declaring that there shall not be a longer interval than three years after a dissolution; yet the *stat. 16 Car. 2.* seems to be more extensive in its operation; by providing that there shall not be an intermission of more than three years after any sitting of Parliament, which will extend also to a prorogation. But as the mutiny-act, and the land-tax and malt-tax acts are passed for one year only, the statutes enforcing the meeting of Parliament are now of little avail; for the Parliament must necessarily be summoned for the despatch of business, once every year. In antient times, indeed, especially before the abolition of the feudal tenures at the restoration of *Charles* II. our Kings had such a revenue, independent of Parliament, that they were enabled to reign many years together without the assistance of Parliament, and in defiance of the statutes made to compel their calling it together. 1 *Comm. 153. in n.*

By statute, *stat. 5 R. 2. st. 2. c. 4.* every person and commonalty, having summons to Parliament, shall come thither, on pain to be amerced, or otherwise punished: and if the Sheriff doth not summon the cities and boroughs as usual, he shall likewise be punished.

III. THE constituent parts of a Parliament are, *The King's Majesty*, sitting there in his royal political capacity; and the three Estates of the Realm, *the Lords Spiritual, the Lords Temporal*, (who sit together with the King in one house,) and the *Commons*, who sit by themselves in another. Others however, more consonantly with the common understanding of the nature and powers of Parliament, consider the three

Estates of the Realm to be *King, Lords, and Commons*. See *post*. And the King, and these three Estates together, form the great corporation or body politic of the kingdom, of which the King is said to be *caput, principium, et finis*. 4 *Inst.* 1, 2: *stat.* 1 *Eliz.* c. 3: *Hale of Parl.* 1. For, upon their coming together, the King meets them either in person or by representation, without which there can be no beginning of a Parliament; and he also has alone the power of dissolving them. 4 *Inst.* 6: 1 *Comm.* c. 2. *p.* 153.

The learned commentator then proceeds to shew how highly necessary it is, for preserving the balance of the Constitution, that the Executive Power should be a branch, though not the whole, of the Legislative; and how each branch of our civil polity supports and is supported, regulates and is regulated, by the rest. See 1 *Comm.* *p.* 153—155; and as to the general extent of the King's power, prerogative, &c. this Dictionary, title *King*.

On holding a Parliament, the King, the first day, sits in the Upper House, and by himself, or the Lord Chancellor, shews the reason of their meeting; then the Commons are commanded to choose their Speaker; which done, two or three days afterwards he is presented to the King, and after some speeches is allowed, and sent down to the House of Commons; when the business of Parliament proceeds. 11 *Rept.* 115. See *post* VI.

A Parliament cannot begin, on return of the writs, without the King in person, or by representation; and by representation two ways, either by a Guardian of *England*, by letters patent under the great seal, when the King is out of the realm; or by commission, to certain Lords in case of indisposition, &c. when his Majesty is at home. 4 *Inst.* 6, 7. And if any Parliament is to be holden before a Guardian of the Realm, there must be a special commission to begin the Parliament; but the teste of the writs of summons is to be in the guardian's name: and by an antient law, *stat.* 8 *H.* 5. c. 1, if the King, being beyond sea, cause a Parliament to be summoned in this kingdom, by writ under the teste of his lieutenant, and after the King returns hither, the Parliament shall proceed without any new summons.

In the 5th year of *Henry V.* a Parliament was holden before *John Duke of Bedford*, brother to the King, and guardian of the kingdom. *Anno* 3 *Ed.* IV. a Parliament was begun in the presence of the King, and prorogued to a further day; and then *William Archbishop of York*, the King's commissary by letters patent, held the same Parliament, and made an adjournment, &c. And 28 *Eliz.* the Queen by commission under the great seal, (reciting, that for urgent occasions she could not be present in her royal person.) did authorise *John Whitgift*, Archbishop of *Canterbury*, *William Lord Burleigh*, Lord Treasurer of *England*, and *Henry Earl of Derby*, Lord Steward, to hold a Parliament, &c. *Ad faciendum omnia et singula, &c. necnon ad Parliamentum adjornand. et prorogand.* &c. And in the upper part of the page, above the beginning of the commission is written, *Dominæ Reginae representatur per commissarios, viz. &c.* These commissioners sat on a form before the cloth of state, and after the commission read, the Parliament proceeded.

A Parliament may be holden at any place the King shall assign. See 1 *Comm.* *p.* 153. *in n.*

The constituent parts of Parliament, next in order, are the

Spiritual Lords. These consist of two Archbishops, and twenty-four Bishops; and at the dissolution of monasteries by *Henry VIII.* consisted likewise of twenty-six mitred abbots, and two priors. *Seld. Title Hon.* 2, 5, 27. A very considerable body; and in those times equal to half the number of the temporal nobility: *Co. Litt.* 97: See 4 *Inst.* 1; by which it appears, that the number of the temporal nobility was one hundred and six. All these hold, or are supposed to hold, certain antient baronies, under the King; for *William the Conqueror* thought proper to change the spiritual tenure, of frankalmoign or free alms, under which the bishops held their lands during the *Saxon* Government, into the feudal or *Norman* tenure by barony; which subjected their estates to all civil charges and assessments, from which they were before exempt; *Gilb. Hist. Exch.* 55: *Spelm. W.* 1. 291; and in right of succession to those baronies, which were unalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords. *Glanv.* 7. 1: *Co. Litt.* 97: *Seld. Title Hon.* 2, 5, 19. But though these Lords Spiritual are, in the eye of the law, a distinct estate from the Lords Temporal, and are so distinguished in most of our acts of Parliament, yet in practice they are usually blended together under the one name of *the Lords*; they intermix in their votes, and the majority of such intermixture binds both Estates. And from this want of a separate assembly, and separate negative, of the prelates, some writers have argued (*Whitelocke on Parl. c.* 72: *Warburt. Alliance*, b. 2. c. 3.) very cogently, that the Lords Spiritual and Temporal are now in reality only one Estate; *Dyer* 60: which is unquestionably true in every effectual sense; though the antient distinction between them still nominally continues. For if a bill should pass their House there is no doubt of its validity, though every Lord Spiritual should vote against it; of which *Selden* and *Sir E. Coke* give many instances; as on the other hand, it seems that it would be equally good, if the Lords Temporal present were inferior to the bishops in number, and every one of those Temporal Lords gave his vote to reject the bill; though *Sir E. Coke* seems to doubt whether this would not be an ordinance, rather than an act of Parliament. 4 *Inst.* 25: see *Selden's Baronage*, p. 1. c. 6: *Gibs. Cod.* 286. See also 2 *Inst.* 585, 6, 7: and *Keilw.* 184; where it is holden by the Judges, 7 *Hen. VIII.* that the King may hold a Parliament without any Spiritual Lords. This was also exemplified in fact in the two first Parliaments of *Charles II.* wherein no bishops were summoned; till after the repeal of the *stat. 16 Car. 1. c. 27.* by *stat. 13 Car. 2. st. 1. c. 2.* On the Union with *Ireland* four Lords Spiritual were added; to sit by rotation of Sessions. See title *Ireland.*

No rational or antient principle can perhaps be suggested, why the bishops should not have exactly the same legislative functions, as the other Peers of Parliament; the style of the House of Lords, *viz.* the Lords Spiritual and Temporal, was probably intended as a compliment to the bishops; to express the precedence that they are entitled to, before all the temporal barons; which originally was the only character that gave a claim to a seat in the House of Lords. Unless precedents could be found to the contrary, there seems to be no reason to doubt, but that any act at this day would be valid, though all the Temporal Lords or all the Spiritual Lords were absent. 1 *Comm.* 156, n.

In the *stat. 1 Eliz. c. 2.* the style of the Parliament is, the Lords and Commons in Parliament assembled; but there is the same style used also in *stat. 1 Eliz. c. 11.*, a revenue act. On the 18th of *February* 1641, a motion was made in the *Irish House of Lords*, "That as all the bishops were against a representation about certain grievances, the Lords Spiritual should not be named: upon which the Judges were consulted; and their opinion was, that in any act or order which passed, it must be entered "by the Lords Spiritual and Temporal." 1 *Mountm.* 344.

The *Lords Temporal* consist of all the Peers of the realm; (the bishops not being in strictness held to be such, but merely Lords of Parliament, *Stauf. P. C.* 153;) by whatever title of nobility distinguished; Dukes, Marquisses, Earls, Viscounts, or Barons; as to which dignities, see this Dictionary, under those titles, and title *Peers*. Some of these sit by descent, as do all antient Peers; some by creation, as do all new-made ones; others, since the union with *Scotland* and *Ireland*, by election; which is the case of the sixteen Peers, who represent the body of the Scots nobility, and the twenty-eight temporal Lords, elected for life by the Peers of *Ireland*. See title *Ireland*. The number of Lords Temporal is indefinite, and may be increased, at will, by the power of the Crown; and once, in the reign of Queen *Anne*, there was an instance of creating no less than twelve together; in contemplation of which, in the reign of *George I.* a bill passed the House of Lords, and was countenanced by the then ministry, for limiting the number of the peerage. This was thought by some to promise a great acquisition to the Constitution; by restraining the prerogative from gaining the ascendant in that august assembly, by pouring in at pleasure an unlimited number of new-created Lords. But the bill was ill relished, and miscarried in the House of Commons, whose leading members were then desirous to keep the avenues to the other House as open and easy as possible. See 1 *Comm.* 157. By the union with *Ireland*, the number of *Irish Peers* is limited, so that by future creation it cannot exceed one hundred. See title *Ireland*.

The *Commons*, according to the present ordinary acceptation of the term, consist of all such men of property in the kingdom as have not seats in the House of Lords; indeed in its largest sense the word comprehends all who are not Peers of the realm: but it appears, in its original signification, to have been confined to those only who had a right to sit, or had a right to vote for representatives in, the House of Commons; and in its strict parliamentary sense, in which alone it ought to be here understood, it means the *Knights, Citizens, and Burgesses* who are the representatives, in the House of Commons, of the various counties, cities, and boroughs in the kingdom. In a free state, every man who is supposed a free agent ought to be in some measure his own governor; and therefore a branch, at least, of the legislative power should reside in the whole body of the People. In the State of *Great Britain* it is wisely contrived, that the people should do that, by their representatives, which it is impracticable to perform in person; representatives chosen by a number of minute and separate districts, wherein all the voters are, or easily may be, distinguished. The counties are therefore represented by knights, elected by the proprietors of lands: the cities and boroughs are represented by citizens and burgesses, chosen by the mercantile part, or supposed trading interest, of the nation. The number of *English*

representatives is five hundred and thirteen, and of *Scotch* forty-five; in all, five hundred and fifty-eight. And every member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the *common-wealth*; to advise his Majesty (as appears from the writ of summons) “*de communi consilio, super negotiis quibusdam arduis et urgentibus, regem, statum, et defensionem regni Angliæ, et ecclesiæ Anglicanæ, concernentibus.*” 4 *Inst.* 14. And therefore (says *Blackstone*) he is not bound to consult with, or take the advice of, his constituents upon any particular point, unless he himself thinks it proper or prudent so to do. See 1 *Comm.* 157, 9. and the notes there.

These are the constituent parts of a Parliament; the King, the Lords Spiritual and Temporal, and the Commons; Parts, of which each is so necessary, that the consent of all three is required to make any new law that shall bind the Subject. Whatever is enacted for law by one, or by two only of the three, is no statute; and to it no regard is due, unless in matters relating to their own privileges. For though, in times of madness and anarchy, the House of Commons once passed a vote (which, as has been well observed, was a natural prologue to the tragical drama immediately afterwards performed), “that whatsoever is enacted or declared for law, by the Commons in Parliament assembled, hath the force of law; and all the people of this nation are concluded thereby, although the consent and concurrence of the King or House of Peers be not had thereto;” yet, when the Constitution was restored in all its forms, it was particularly enacted by *stat.* 13 *Car.* 2. c. 1, that if any person shall maliciously or advisedly affirm, that both or either of the Houses of Parliament have any legislative authority, without the King, such person shall incur all the penalties of a *fræmunire*: we must, however, remember the exceptions to this rule; arising, as has been already mentioned, from State necessity.

IV. 1. THE power and jurisdiction of Parliament, says Sir *Edward Coke*, is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. 4 *Inst.* 36. It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws; concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal; this being the place where that absolute despotic power, which must in all governments reside somewhere, is intrusted, by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of law, are within the reach of this extraordinary tribunal. It can regulate or new-model the succession to the Crown; as was done in the reign of *Henry VIII.* and *William III.* It can alter the established religion of the land; as was done, in a variety of instances, in the reigns of King *Henry VIII.* and his three children. It can change and create afresh even the Constitution of the kingdom, and of Parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can, in short, do every thing that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament; an

expression, however, which in fact seems to signify nothing more than the supreme sovereign power of the State; or a power of action uncontrolled by any superior. In this sense, the King in the exercise of his prerogatives, and the House of Lords in the interpretation of laws, are also omnipotent; that is, free from the control of any superior provided by the Constitution. True it is, that what the Parliament doth, no authority upon earth can undo. So that it is a matter most essential to the liberties of this kingdom, that such members be delegated to this important trust as are most eminent for their probity, their fortitude, and their knowledge; for it was a known apophthegm of the great lord treasurer *Burleigh*, "that *England* could never be ruined but by a Parliament; and as *Sir Matthew Hale* observes, this being the highest and greatest Court, over which none other can have jurisdiction in the kingdom, if by any means a misgovernment should any way fall upon it, the Subjects of this kingdom are left without all manner of remedy of Parliament. *Hale of Parl.* 49. To the same purpose *Montesquieu* (though it is earnestly to be hoped too hastily,) presages, that as *Rome*, *Sparta*, and *Carthage* have lost their liberty and perished, so the Constitution of *England* will in time lose its liberty, will perish; it will perish whenever the Legislative Power shall become more corrupt than the executive. *Sp. L. l. 11. c. 6.*

It must be owned that *Mr. Locke*, and other theoretical writers have held, that "there remains still inherent in the people a supreme power to remove or alter the Legislature, when they find that Legislature act contrary to the trust reposed in them; for when such trust is abused, it is thereby forfeited, and devolves to those who gave it." *Locke on Gov. part 2. § 149, 227.* But, however just this conclusion may be in theory, we cannot practically adopt it: nor take any legal steps to carry it into execution, under any dispensation of government at present actually existing. For this devolution of power to the people at large, includes in it a dissolution of the whole form of government established by that people; reduces all the members to their original state of equality, and by annihilating the sovereign power, repeals all positive laws whatsoever, before enacted. No human laws will therefore suppose a case, which at once must destroy all law, and compel men to build afresh upon a new foundation; nor will they make provision for such a desperate event, as must render all legal provision ineffectual. So long, therefore, as the *English* Constitution lasts, we may venture to affirm, that the power of Parliament is absolute and without control.

In order to prevent the mischiefs that might arise by placing this extensive authority in hands, either incapable or improper to manage it, it is provided by custom and the law of Parliament, that no one shall sit or vote in either House unless he be twenty-one years of age. *Whitel. c. 50: 4 Inst. 47.* This is also expressly declared by *stat. 7 & 8 W. 3. c. 25. § 8.* with regard to the House of Commons; doubts having arisen from some contrary adjudications whether or not a minor was incapacitated from sitting in that House.— This provision has not always been strictly attended to. It is also enacted by *stat 7 Jac. 1. c. 6.* that no member be permitted to enter into the House of Commons, till he hath taken the Oath of Allegiance before the Lord Steward, or his deputy. The Lord Steward, on the first day of the meeting of a new Parliament, attends in a room ad

joining to the House of Commons, and administers the oath to the members present; and he then executes a commission or deputation, empowering any one or more of a great number of members specified to administer the oath to others. By *stats. 30 Car. 2. st. 2: 1 Geo. 1. c. 13.* no member shall vote or sit in either House till he hath, in the presence of the House, taken the Oath of Allegiance, Supremacy, and Abjuration; (the latter now as altered by *stat. 6 Geo. 3. c. 53.* see title *Oaths*;) and subscribed and repeated the declaration against transubstantiation, and invocation of Saints, and the sacrifice of the Mass. *Aliens*, unless naturalized, were likewise by the law of Parliament incapable to serve therein; and now it is enacted, by *stat. 12 & 13 W. 3. c. 2.* that no alien, even though he be naturalized, shall be capable of being a member of either House of Parliament.

There are not only these standing incapacities, but if any person is made a Peer by the King, or elected to serve in the House of Commons, by the people, yet may the respective Houses, upon complaint of any crime in such person, and proof thereof, adjudge him disabled, and incapable to sit as a member, and this by the law and custom of Parliament. 1 *Comm. c. 2. p. 163*; cites *Whitel. of Parl. c. 102*; and refers to *Lords' Journ. 3 May 1620: 13 May 1624: 26 May 1725: Comm. Journ. 14 Feb. 1580: 21 Ju. 1628: 9 Nov.: 21 Jan. 1640: 6 Mar. 1676: 6 Mar. 1711: 17 Feb. 1769.*

The sentence immediately preceding was not in the first editions of the Commentaries, but was added, no doubt with an allusion to the *Middlesex* election; the circumstances of which were briefly these: On *January 19-20, 1764, J. W.* was expelled the House of Commons for being the author of a seditious libel: at the next election in 1768 he was elected for the county of *Middlesex*; and on *February 3, 1769,* it was resolved, that *J. W. Esq.* who had acknowledged himself to be the author and publisher of a paper which the House had previously pronounced to be an insolent, scandalous, and seditious libel, (not the same for which he was expelled in the former Parliament,) and who had been convicted in the Court of K. B. of having printed and published a seditious libel, and *three obscene and impious libels,* and being sentenced to twenty-two months' imprisonment, *be expelled this House.* A new writ having been ordered for the county of *Middlesex,* Mr. *W.* was re-elected without opposition; and on *February 17, 1769,* it was resolved, "that *J. W. Esq.* having been, in this session of Parliament, expelled this House, was and is incapable of being elected a member to serve in this present Parliament:" and the election was declared void, and a new writ ordered. He was a second time re-elected without opposition; and on *March 17, 1769,* the House again declared the election void, and ordered a new writ: At the next election Mr. *Luttrell,* who had vacated his seat for the purpose, by accepting the Chiltern Hundreds, offered himself a candidate against Mr. *W.* Mr. *W.* had 1143 votes, and Mr. *Luttrell* 296. Mr. *W.* was again returned by the Sheriff. On *April 15, 1769,* the House resolved, that Mr. *Luttrell* ought to have been returned, and ordered the return to be amended: allowing fourteen days for a petition against the return: one was accordingly presented on *April 29,* by certain freeholders of *Middlesex*; and on the 8th of *May* the House resolved that Mr. *Luttrell* was duly elected. On the 3d of *May 1783,* (fourteen years afterwards!) it was resolved, that the resolution of the

17th February 1769 should be expunged from the Journals of the House, as *being subversive of the rights of the whole body of electors of this kingdom*. And at the same time it was ordered, that all the declarations, orders, and resolutions respecting the election of *J. W.* should be expunged.

The history of *England* furnishes many instances of important constitutional questions that have deeply agitated the minds of the people of this country, which can raise little or no doubt in the minds of those who view them at a distance, uninfluenced by interest or passion. It has been thought by some that it was a *violent* measure in the House of Commons to expel a member for the libels which he had published; but that the subsequent proceedings were agreeable to the law of Parliament, that is, to the law of the land, the authorities referred to, by the learned commentator, seem most unanswerably to prove. But what shall be considered to be the law with regard to the incapacities of candidates, since these proceedings were expunged, it will be difficult indeed to determine. The resolution to expunge implies the correction of an error, after mature deliberation. If it had not been declared that a former resolution was subversive of the rights of electors, it might perhaps have been supposed that it was intended only as a personal compliment to the member expelled. But it does not state in what instance the former resolution was so subversive. They who wish for a certain knowledge of their rights and liberties must lament such a want of precision; but they must wait with patience till the wisdom of the House has occasion to explain its own judgment; and which, perhaps, if ever it should arise, would be attended with the same outrageous spirit of party, which too frequently influences the decision of public questions; acting rather upon grounds and motives, which ought to be discarded with the most religious impartiality, than on the broad basis of sound constitutional doctrine, or the real interest and welfare of the Subject. See *1 Comm. c. 2. p. 163, and n.* More modern instances of expulsion have occurred, but being acquiesced in without contest, are not sufficient to settle the principle of such proceedings.

As every Court of justice hath laws and customs for its direction, some the civil and canon, some the Common Law, others their own peculiar laws and customs; so the high Court of Parliament hath also its own peculiar law, called the *Lex et consuetudo Parliamenti*: a law much better to be learned out of the rolls of Parliament, and other records, and by precedents and continual experience, than can be expressed by any one man. *4 Inst. 50.* It will be sufficient to observe, that the whole of the law and custom of Parliament has its original from this one maxim, "that whatever matter arises, concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere." *4 Inst. 15.* Hence, for instance, the Lords will not suffer the Commons to interfere in settling the election of a Peer of *Scotland*; the Commons will not allow the Lords to judge of the election of a member; nor will either House permit the subordinate Courts of law to examine the merits of either case. But the maxims upon which they proceed, together with the method of proceeding, rest entirely in the breast of the Parliament itself; and are not defined and ascertained by any particular stated laws. See *post VI. (B) 3.*

The Court at *Westminster* may judge of the privilege of Parlia-

ment, where it is incident to a suit the Court is possessed of: and Courts may proceed to execution between the sessions of Parliament, notwithstanding appeals lodged, &c. 2 *St. Tr.* 66, 209.

The King cannot take notice of any thing, said to be done in the House of Commons, but by the report of the House, and every member of the House of Parliament has a judicial place, and cannot be a witness. 4 *Inst.* 15. When *Charles I.* being in the House of Commons, and sitting in the Speaker's chair, asked the then speaker, whether certain members (whom the King named) were present? The Speaker, from a presence of mind which arose from the genius of that House, readily answered, "That he had neither eyes to see, nor tongue to speak, but as the House was pleased to direct him." *Atkin's Jurisd. and Antiquity of the House of Commons.* Hen. VIII., having commanded Sir *Thomas Gaudy* (one of the judges of the King's Bench) to attend the chief justices and know their opinion, whether a man might be attainted of high treason by Parliament, and never called to answer; the judges declared it was a dangerous question, and that the High Court of Parliament ought to give examples to inferior Courts, for proceeding according to justice, and no inferior Court could do the like. *Lex Constitution* 161.

The House of Lords is a distinct Court from the Commons, to several purposes: they try criminal causes on the impeachments of the Commons; and have an original jurisdiction for the trial of Peers, upon indictments found by a grand jury: they also try causes upon appeals from the Court of Chancery, or upon writs of error to reverse judgments in *B. R.* &c. See *post* V. 2. And all their decrees are as judgments; and judgments given in Parliament may be executed by the Lord Chancellor. 4 *Inst.* 21: *Finch*, 233: 1 *Lev.* 165. Also the House of Commons is a distinct Court to many purposes; they examine the right of elections, expel their own members, and commit them to prison, and sometimes other persons, &c. See *post*. And the book of the clerk of the House of Commons is a record. 2 *Inst.* 536: 4 *Inst.* 23. The Commons, coming from all parts, are the grand inquest of the realm; to present public grievances and delinquents to the King and Lords to be punished by them: and any member of the House of Commons has the privilege of impeaching the highest Lord in the kingdom. *Wood's Inst.* 455.

The High Court of Parliament is the supreme Court in the kingdom, not only for the making, but also for the execution of laws; by the trial of great and enormous offenders, whether Lords or Commoners, in the method of parliamentary impeachment. Acts of Parliament to attain particular persons of treason or felony, or to inflict pains and penalties, are new laws made *pro re natá*, and by no means an execution of such as are already in being: but an impeachment before the Lords, by the Commons of *Great Britain*, in Parliament, is a prosecution of the already known and established law, and has been frequently put in practice; being a presentment to the most high and supreme Court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom. 1 *Hal. P. C.* 150. A Commoner, it is said by *Blackstone*, who quotes authorities to prove his position, cannot be impeached before the Lords for any capital offence, but only for high misdemeanors; a Peer may be impeached for any crime: But it appears, that the right of impeaching a Commoner even in capital cases, has been claimed and asserted by the Lords. See 4 *Comm.* 260, *in n.*

The Commons usually, in case of an impeachment of a Peer for treason, address the Crown to appoint a Lord High Steward for the greater dignity and regularity of their proceedings; which High Steward was formerly elected by the Peers themselves, though he was generally commissioned by the King. 1 *Hal. P. C.* 350. But it hath been strenuously maintained, that the appointment of an High Steward in such cases is not indispensably necessary, but that the House may proceed without one.

This custom of impeachment has a peculiar propriety in the *English* Constitution; for though in general the union of the legislative and judicial powers ought to be most carefully avoided, yet it may happen that a Subject, intrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of such crimes as the ordinary magistrate either dares not or cannot punish. Of these the representatives of the people, or House of Commons, cannot properly *judge*; because their constituents are the parties injured; and can therefore only *impeach*. In the trial of such an impeachment, ordinary tribunals would naturally be swayed by the authority of so powerful an accuser. Reason, therefore, will suggest that this branch of the Legislature, which represents the people, must bring its charge before the other branch, which consists of the nobility, who have neither the same interests nor the same passions as popular assemblies. It is proper that the nobility should judge, to insure justice to the accused; as it is proper that the people should accuse, to insure justice to the commonwealth. 4 *Comm. c.* 19. *f.* 261. See *Impeachment*.

As to the Court of the Lord High Steward for the trial of a Peer, see this Dictionary, title *Peers*; and as to the jurisdiction of the House of Lords, see further *post*. V. 2.

After the reign of *Hen. IV.* although the old form of the King's appointing Receivers and Tryers, or Auditors, of petitions, at the beginning of every Parliament, (which is traceable as far back as 33 *Ed. I.* and is still scrupulously adhered to,) was continued, and so ever gave the opportunity of calling the judicature of the whole Parliament into action, yet in point of fact the exercise of jurisdiction in Parliament over causes seems to have gradually fallen into disuse. It has been suggested, however, that though this appointment of Receivers and Tryers, or Auditors, of petitions, at the beginning of a new Parliament, has long in point of practice been considered as mere form, yet it seems still to be open to any person at the beginning of a new Parliament, by presenting a petition to the Receivers, within the time limited by the appointment of them, to call into action the duties both of Receivers and of Tryers or Auditors, and so to resuscitate the antient manner of exercising parliamentary jurisdiction, or at least to put to a test its susceptibilty of being so revived. It is to be considered also that there may be cases which, from the failure of other modes of relief, may at some future time induce the trial of such an experiment. See *Hargrave's Preface to Hale's Jurisdiction of the Lords' House of Parliament*, *just.* vi; xxxv. See also *post* V. 2.

IV. 2. THE privileges of Parliament are very large and indefinite; and therefore when in 31 *Hen. 6.* the House of Lords propounded a question to the judges concerning them, the chief justice, Sir *John Fortesque*, in the name of his brethren, declared, "that they ought not

to make answer to that question, for it hath not been used aforetime that the justices should in any wise determine the privileges of the High Court of Parliament; for it is so high and mighty in its nature, that it may make law; and that which is law, it may make no law: and the determination and knowledge of that privilege belongs to the Lords of Parliament, and not to the justices." *Seld. Baronage*, p. 1. c. 4. Privilege of Parliament was principally established, in order to protect its members, not only from being molested by their fellow-subjects, but also more especially from being oppressed by the power of the Crown. If therefore all the privileges of Parliament were once to be set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the Executive Power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member, and violate the freedom of Parliament. The dignity and independence of the two Houses are therefore in a great measure preserved by keeping the privileges indefinite. But in answer to this observation it has been justly remarked, that clearness and certainty are essentially necessary to the liberty of *Englishmen*; and that rights and privileges cannot well be claimed, unless they are ascertained and defined.

There are several privileges of the members of either House, which are sufficiently certain and notorious. These are privilege of speech, of person: [and before the *stat. 10 Geo. 3. c. 50.* of their domestics, and of their lands and goods]. As to the first, privilege of speech, it is declared by the *stat. 1 W. & M. st. 2. c. 2.* as one of the liberties of the people, "that the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached, or questioned, in any Court or place out of Parliament." And this freedom of speech (with other privileges) is particularly demanded of the King in person, by the Speaker of the House of Commons, at the opening of every new Parliament.

If any member of either House, however, speak words of offence in a debate, after the debate is over he is called to the bar, where commonly on his knees he receives a reprimand from the Speaker; and if the offence be great, he is sent to the *Tower*. When the bill of attainder of the earl of *Strafford* was passing the House of Commons, Mr. *Taylor*, a member of that House, opposed it with great violence, and being heard, to explain himself, was commanded to withdraw; whereupon it was resolved he should be expelled the House, be made incapable of ever serving as a member of Parliament, and should be committed prisoner to the *Tower*, there to remain during the pleasure of the House: and he was called to the bar, where he kneeled down, and Mr. Speaker pronounced the sentence accordingly. And Sir *Sahn Elliot*, *Denzil Hollis*, and another person having spoken these words, *viz.* "the King's Privy Council, his judges and his counsel learned in the law, have conspired to trample under their feet the liberties of the Subject, and of this House," an information was filed against them by the Attorney General; and farther, for that the King having signified his pleasure to the House of Commons for the adjournment of the Parliament, and the Speaker endeavouring to get out of the chair, they *violenter*, &c. detained him in the chair, upon which there was a great tumult in the House, to the terror of the Commons there assembled, and against their allegiance, in contempt of the King, his crown and dignity: the defendants pleaded to the ju-

risdiction of the Court; and refused to answer but in Parliament; but it was adjudged, that they ought to answer, the charge being for a conspiracy, and seditious acts, to prevent the adjournment of the Parliament, which may be examined out of it; and not answering, judgment was given against them, that Sir *John Elliot* should be committed to the *Tower*, and fined 2000*l.*; and the other two were fined and imprisoned. *Cro. Car.* 130.

The other privileges, of persons, [and heretofore of servants, lands, and goods,] are immunities as antient as *Edward* the Confessor; in whose laws we find this precept, "*ad synodos venientibus sive summoniti sint, sive per se quid agendum habuerint sit summa pax.*" *L. Ed. Conf. c.* 3. This included formerly not only privilege from illegal violence, but also from legal arrests and seizures by process from the Courts of law. And still to assault by violence a member of either House, or his menial servants, is a high contempt of Parliament, and there punished with the utmost severity. It has likewise peculiar penalties annexed to it in the Courts of law, by *stat. 5 Hen. 4. c.* 6. and *11 Hen. 6. c.* 11. By this latter statute, assaulting a member coming to or attending in Parliament incurs the penalty of double damages, and the offender shall make fine and ransom.

Sir *Robert Brandling* made an assault upon Mr. *Witherington*, a member of the House of Commons, in the country before his coming up to Parliament, and Sir *Robert* was sent for by the House, and committed to the *Tower*. And *anno 19 Jac. I.* some speeches passed privately in the House between two of the members, and one of them going down the Parliament stairs struck the other, who catching at a sword in his man's hand, endeavoured to return the stroke; on complaint to the House of Commons they were both ordered to attend, where he who gave the blow was committed to the *Tower* during the pleasure of the House. *Dict.*

Neither can any member of either House be arrested and taken into custody, unless for some indictable offence; without a breach of the privilege of Parliament. See *post*.

But all other privileges which derogate from the Common Law in matters of civil right are now at an end, save only as to the freedom of the member's person; which in a Peer (by the privilege of peerage) is for ever sacred and inviolable; and in a Commoner (by the privilege of Parliament) for forty days after every prorogation, and forty days before the next appointed meeting: which is now, in effect, as long as the Parliament subsists, it seldom being prorogued for more than fourscore days at a time. *2 Lev.* 72. It does not appear that the privilege from arrest is limited to any precise time after a dissolution; but it has been determined by all the judges, that it extends to a convenient time. *Col. Pit's Case, 2 Str.* 988. *Prynne* is of opinion, that it continued for the number of days the member received wages after a dissolution: which were in proportion to the distance between his home and the place where the Parliament was held. *4 Parl. Writs.* 68. As to all other privileges which obstruct the ordinary course of justice, they were restrained by *stats. 12 W. 3. c.* 3: *2 & 3 Ann. c.* 18: *11 Geo. 2. c.* 24; and are now totally abolished by *stat. 10 Geo. 3. c.* 50; which enacts, that any suit may at any time be brought against any Peer or member of Parliament, their servants, or any other person entitled to privilege of Parliament; which shall not be impeached or delayed by pretence of any such privilege; except that the person

of a member of the House of Commons shall not thereby be subject to any arrest of imprisonment. Likewise, for the benefit of commerce, it is provided by *stat. 4 Geo. 3. c. 33.* that any trader, having privilege of Parliament, may be served with legal process for any just debt to the amount of 100*l.* and unless he makes satisfaction within two months, it shall be deemed an act of bankruptcy; and that a commission of bankrupt may be issued against such privileged traders in like manner as against any other. See this Dictionary, title *Bankrupt.*

The *stat. 12 W. 3. c. 3.* enacted, that actions might be prosecuted against persons entitled to privilege of Parliament, after a dissolution or prorogation, until a new Parliament was called, or the same was re-assembled: and after adjournment for above fourteen days, the respective Courts might proceed to judgment, &c. Proceedings were to be by summons and distress infinite, &c. until the parties should enter a common appearance; and the real or personal estates of the defendants to be sequestered for default of appearance; but the plaintiff not to arrest their bodies; and where any plaintiff should be staid or prevented from proceeding by privilege of Parliament, he should not be barred by any statute of limitation, or nonsuited, dismissed, or his suit discontinued for want of prosecution; but at the rising of the Parliament should be at liberty to proceed to judgment and execution. This act was, by *stat. 10 Geo. 3. c. 50.* extended to *Scotland.* See title *Privilege.*

The *stat. 2 & 3 Ann. c. 18.* provided, that actions may be prosecuted against officers of the revenue, or in any place of public trust, for any forfeiture or breach of trust, &c. and shall not be staid by colour of privilege; but such officer being a member of Parliament, is not subject to arrest during time of privilege, but summons, attachment, &c.

The *stat. 11 Geo. 2. c. 24.* enacted, that any person might prosecute a suit in any Court of record, &c. in *Great Britain* or *Ireland*, against any Peer or member of the House of Commons, or other person entitled to privilege, in the intervals of Parliaments, or of Sessions, if above fourteen days; and the said Courts, after dissolutions or prorogations, were to give judgment, and award execution: and no proceedings in law against the King's immediate debtor, as such, &c. to be delayed under colour of such privilege; only the person of a Member of Parliament, &c. shall not be arrested or imprisoned.

The *stat. 10 Geo. 3. c. 50.* already mentioned, provides, that suits may at any time be prosecuted in Courts of record, equity, or admiralty, and Courts having cognizance of causes matrimonial, and testamentary, against Peers and Members of the House of Commons, and their servants, &c. Process by *distringas* being found dilatory, the Court, out of which the writ proceeds, may order the issues to be sold, and the money arising thereby to be applied to pay the costs to the plaintiff, and the surplus to be retained till the appearance of the defendant, &c.—When the purpose of the writ is answered, the issues are to be returned; or, if sold, the money remaining is to be repaid.—Obedience to the rule of the Court of King's Bench, Common Pleas, or Exchequer may be enforced by distress infinite.

Stat. 47 Geo. 3. st. 2. c. 40. enacts, that when any Bill of complaint, &c. shall be exhibited in any Court of equity against any member of the House of Commons, it shall not be necessary to leave a copy of the Bill with the Defendant, or at his place of abode, as formerly practised; but the person exhibiting such Bill may proceed, for want of

appearance or answer, to sequestrate the real and personal Estate of such member, as before the passing of the act he might have done, after leaving the Copy of the Bill with the Defendant.

Judgment was had against the defendant, and afterwards he was chosen a member of Parliament, and after his election he was taken in execution, yet he had his privilege; though the book tells us *minus justè*. Moor 57. And where judgment being had against a defendant, he was taken in execution in the morning, and about three hours afterwards was chosen a member of Parliament; the House agreed, that being arrested before he was chosen, &c. he shall not have his privilege. Moor 340. See further this Dictionary, title *Privilege*.

To shew what the Subject has gained by the provisions of the several acts of Parliament, which have restrained the privileges of members, so far as they could be used as exceptions to, or infringements on, public justice, we need only recur to the cases in our books treating of the privileges of Parliament, relating to arrests of members of the House of Commons, and their servants, and the manner of their confinement, releasement, &c. In the first year of King Jac. I., Sir *Thomas Shirley*, a member of Parliament, was arrested four days before the sitting of the Parliament, and carried prisoner to the *Fleet*; on which a warrant issued to the clerk of the Crown for a *habeas corpus* to bring him to the House, and the serjeant was sent for in custody, who being brought to the bar, and confessing his fault, was excused for that time: but on hearing counsel at the bar for Sir *Thomas Shirley*, and the warden of the *Fleet*, and upon producing precedent, *Simpson* the prosecutor, who caused the arrest to be made, was ordered to be committed to the *Tower*; and afterwards the warden refusing to execute the writ of *habeas corpus*, and the delivery of Sir *Thomas*, being denied, was likewise committed to the *Tower*; though on his agreeing to deliver up Sir *Thomas*, upon a new warrant for a new writ of *habeas corpus*, and making submission to the House, he was discharged: this affair taking up some time, the House entered into several debates touching their privilege, and how the debt of the party might be satisfied; which produced three questions: First, Whether Sir *Thomas Shirley* should have privilege? Secondly, Whether presently, or to be deferred? And, Thirdly, Whether the House should petition the King for some course for securing the debt of the party, according to former precedents, and saving harmless the warden of the *Fleet*? All which questions were resolved; and a bill was brought in to secure *Simpson's* debt, &c. which also occasioned the statute 1 Jac. 1. c. 13. for relief of plaintiffs in writs of execution, where the defendants in such writs are arrested, and set at liberty by privilege of Parliament; by which a fresh prosecution and new execution may be had against them when that privilege ceases. *Lex Constitution.* 141. And anno 19 Jac. I. one *Johnson*, a servant to Sir *James Whitlock*, a member of the House of Commons, was arrested by two bailiffs; who being told Sir *James Whitlock* was a Parliament-man, answered, that they had known greater men's servants than his taken from their masters in time of Parliament: and this appearing, the two bailiffs were sentenced to ask pardon of the House and Sir *James Whitlock*, on their knees; that they should both ride on one horse bare backed, back to back, from *West-*

minster to the *Exchange*, with papers on their breasts signifying their offence; all which was to be executed presently, *sedente curiâ*. *Lex Const.* 141.

In action of debt on a bond, conditioned that *B. B.* should render himself at such a day and place to an arrest; defendant pleaded, that by privilege of Parliament, the members, &c. and their servants ought not to be arrested by the space of forty days before the sitting of the Parliament, nor during the session, nor forty days afterwards; and that *B. B.* was at that time servant to such a member of Parliament, so as he could not render himself to be arrested; upon demurrer to this plea, it was adjudged ill, because he might have rendered himself at the time and place; but then it would be at their peril if he was arrested. 1 *Brownl.* 81.

The only way by which Courts of justice could antiently take cognizance of privilege of Parliament was by writ of privilege, in the nature of a *supersedeas*, to deliver the party out of custody when arrested in a civil suit. *Dyer.* 59; 4 *Pryn. Brev. Parl.* 757. For when a letter was written by the Speaker to the Judges to stay proceedings against a privileged person, they rejected it as contrary to their oath of office. *Latch.* 58. 150: *Noy* 83. But since the *stat.* 12 *W.* 3. c. 3. which enacts, that no privileged person shall be subject to arrest or imprisonment, it hath been held, that such arrest is irregular *ab initio*, and that the party may be discharged upon motion. *Stra.* 989. It is to be observed, that there is no precedent of any such writ of privilege, but only in civil suits: and that the *stat.* 1 *Jac.* 1. c. 13. and that of King *William* (which remedy some inconveniences arising from privilege of Parliament) speak only of civil actions. And therefore the claim of privilege hath been usually guarded with an exception as to the case of indictable crimes; or as it hath been frequently expressed of treason, felony, and breach (or surety) of the peace. See 4 *Inst.* 25. Whereby it seems to have been understood, that no privilege was allowable to the members, their families, or servants, in any *crime* whatsoever; for all crimes are treated by the law as being *contra pacem domini regis*: and instances have not been wanting wherein privileged persons have been convicted of misdemeanors; and committed or prosecuted to outlawry, even in the middle of a session; which proceeding has afterwards received the sanction and approbation of Parliament. *Mic.* 16 *E.* 4, in *Scac: Ld. Raym.* 1461: *Comm. Journ.* 1726. To which may be added, that in the year 1763, the case of writing and publishing seditious libels was resolved, by both Houses, not to be entitled to privilege; and that the reasons upon which that case proceeded extended equally to every indictable offence. It is not a little remarkable, that the contrary position had been determined, a short time before, by the Court of Common Pleas. A Circumstance which serves to shew that the House, where the case of one of their own members and the dignity of the House were concerned, made a determination more consonant to the rules of general municipal justice, and more favourable to political subordination, than one of the Courts of law in *Westminster-Hall*. See 2 *Wils.* 159, 251: *Comm. Journ.* 24 *Nov*: *Lords Journ. & Protest.* 29 *Nov.* 1763.

The chief, therefore, if not the only, privilege of Parliament in criminal cases, seems to be the right of each House to receive immediate information of the imprisonment or detention of any member, with the reason for which he is detained; a practice that is daily

used upon the slightest military accusations, preparatory to a trial by a Court Martial; and which is recognized by the several temporary statutes for suspending the *Habeas Corpus* act (particularly *stat. 34 Geo. 3. c. 54.*) whereby it is provided, that no member of either House shall be detained, till the matter of which he stands suspected be first communicated to the House of which he is a member, and the consent of the said House obtained for his commitment or detaining. But yet the usage has uniformly been ever since the Revolution, that the communication has been subsequent to the arrest. 1 *Comm. c. 2.*

V. 1. ONE very antient privilege of Peers, considered as members of Parliament, is that declared by the charter of the Forest, (*cap. 11.*) confirmed in Parliament, 9 *H. 3: viz.* That every Lord, spiritual or temporal, summoned to Parliament, and passing through the King's forests, may, both in going and returning, kill one or two of the King's deer without warrant; in view of the forester, if he be present, or on blowing a horn, if he be absent; that he may not seem to take the King's venison by stealth. 1 *Comm. c. 2.*

In the next place they have a right to be attended, and constantly are, by the Judges of the Courts of K. B. and C. P. and such Barons of the Exchequer as are of the degree of the coif, or have been made serjeants at law; as likewise by the King's learned Counsel being serjeants, and by the Masters of the Court of Chancery; for their advice in point of law, and for the greater dignity of their proceedings. [The Lord Chancellor is usually the Speaker of the House.] The Secretaries of State, with the Attorney and Solicitor General, were also used to attend the House of Peers, and have to this day (together with the judges, &c.) their regular writs of summons, issued out at the beginning of every Parliament, *ad tractandum & consilium impendendum*, though not *ad consentiendum*; but whenever, of late years, they have been members of the House of Commons, their attendance here hath fallen into disuse. See *stat. 31 H. 8. c. 10: Moor 551: 4 Inst. 4, 48: Hale of Parl. 140.* On account of this attendance there are several resolutions, before the Restoration, declaring the Attorney General incapable of sitting among the Commons. See *post VI. (B) 2.* Sir Henry Finch, member for the University of Oxford, afterwards Lord Nottingham, and Chancellor, was the first Attorney General who enjoyed that privilege. *Sim. 28.*

Another privilege is, that every Peer, by licence obtained from the King, may make another Lord of Parliament his *proxy*, to vote for him in his absence. *Seld. Baronage, p. 1. c. 1.* A privilege which a member of the other House can by no means have; as he is himself but a proxy for a multitude of other people. 4 *Inst. 12.* This licence had long ceased in Ireland, but the proxies in the House of Lords are still entered, in Latin, *ex licentiâ regis.* This created a doubt in Nov. 1788, whether the proxies in that Parliament were legal, on account of the King's illness. 1 *Ld. Mountm. 342.* But it seems now to be so much a mere form, that the licence may be presumed, though instances are on record where they have been denied by the King, particularly, *An. 6, 27 & 39 E. 3.* Proxies cannot be used in a committee. *Ib. 106.* A proxy cannot sign a protest in England; but he can in Ireland. 2 *Ld. Mountm. 191.* The order that no Lord should have more than two proxies, (*i. e.* be a proxy for more than two ab-

sent Lords,) was made *anno 2 Car. 1.* because the Duke of *Buckingham* had no less than fourteen. 1 *Rushw.* 269. There is an instance, in *Wight 50*, where a proxy is called *litera attornatus ad Parliamentum*; which it is in effect. The Peer who has the proxy is always called, in Latin, *procurator*. If a Peer, after appointing a proxy, appears personally in Parliament, his proxy is revoked and annulled. 4 *Inst.* 13. By the orders of the House no proxy shall vote upon a question of "guilty or not guilty:" and a spiritual Lord shall only be proxy for a spiritual Lord, and a temporal Lord for a temporal. Two or more Peers may be proxy for one absent Peer; but *Coke* is of opinion, that they cannot vote, unless they all concur. 4 *Inst.* 12: 1 *Wood.* 41.

Each Peer has also a right, by leave of the House, when a vote passes contrary to his sentiments, to enter his dissent on the Journals of the House with the reasons for such dissent, which is usually styled his Protest. 1 *Comm. c.* 2. Lord *Clarendon* relates, that the first instances of protests, with reasons, in *England* were in 1641; before which time they usually only set down their names as dissentient to the vote. The first regular protest in *Ireland* was in 1662. 1 *Ld. Mountm.* 402.

All bills likewise that may, in their consequences, any way affect the right of the peerage, are by the custom of Parliament to have their first rise and beginning in the House of Peers; and to suffer no changes or amendments in the House of Commons.

There is also one statute peculiarly relative to the House of Lords, which regulates the election of the sixteen representative Peers of *North Britain*, in consequence of the twenty-second and twenty-third articles of the Union; and for that purpose prescribes the oaths, &c. to be taken by the electors; directs the mode of balloting; prohibits the Peers electing from being attended in an unusual manner; and expressly provides, that no other matter shall be treated of in that assembly, save only the election, on pain of incurring a *præmunire*. *Stat. 6 Ann. c.* 52.

2. Considered in its judicial capacity, the House of Peers is the supreme Court of judicature in the kingdom; having at present no original jurisdiction over causes, but only upon appeals and writs of errors; to rectify any injustice or mistake of the law committed by the Courts below. But this House has original *criminal* jurisdiction in the cases of *impeachment* by the Commons, and of the trial of *Peers*. See this Dictionary under those titles: and see *ante* IV. 1.

To this authority, this august tribunal succeeded of course upon the dissolution of the *Aulia Regia*; for as the Barons of Parliament were constituent members of that Court, and the rest of its jurisdiction was dealt ought to other tribunals, over which the great officers who accompanied those barons were respectively delegated to preside; it followed, that the right of receiving appeals, and superintending all other jurisdictions, still remained in the residue of that noble assembly, from which every other great Court was derived. They are, therefore, in all causes the last resort, from whose judgment no further appeal is permitted; but every subordinate tribunal must conform to their determinations; the law reposing an entire confidence in the honour and conscience of the noble persons who compose this important assembly, that (if possible) they will make themselves masters of those questions, upon which they undertake to decide;

and in all dubious cases refer themselves to the opinions of the Judges, who are summoned by writ to advise them; since upon their decision all property must finally depend. 3 *Comm. c. 4. p. 57.* See also *stats. 27 Eliz. c. 8:* & *31 Eliz. c. 1.*

To this judicial capacity *Blackstone* refers the tribunal established by *stat. 14 E. 3. c. 5.* consisting (though now out of use) of one prelate, two earls, and two barons, who are to be chosen at every new Parliament, to hear complaints of grievances and delays of justice in the King's Courts; and (with the advice of the Chancellor, Treasurer and justices of both benches) to give directions for remedying those inconveniences in the Courts below. See also *stats. 27 Eliz. c. 8;* & *31 Eliz. c. 1.* This Committee seems to have been established, lest there should be a defect of justice, for want of a supreme Court of appeal, during any long intermission or recess of Parliament; for the statute further directs, "that if the difficulty be so great that it may not well be determined, without assent of Parliament, it shall be brought by the said prelate, earls, and barons unto the next Parliament, who shall finally determine the same." 3 *Comm. 58.*

It has been well hinted, to all the members of this supereminent judicature, that when they are declaring what is the law of Parliament, their character is totally different from that with which, as Legislators, they are invested, when they are framing new laws; and that they ought never to forget the admonition of that great and patriotic chief justice *Lord Holt, viz.* "That the authority of Parliament is from the law, and as it is circumscribed by law, so it may be exceeded; and if they do exceed those legal bounds and authority, their acts are wrongful, and cannot be justified any more than the acts of private men." 1 *Salk. 505.* And for the position, that Parliament in their judicial capacity, are governed by the common and statute laws, as well as the Courts in *Westminster-Hall;* see 4 *Inst. 14, 15: 2 St. Tr. 735.*

In the case of the Bishop of *London v. Kytche* it was determined, that a general Bond of resignation (given by the Clergyman to the Patron on his being presented to a living) is simoniacal and illegal: and the House of Lords reversed the judgments of the Courts of C. P. and K. B. to the contrary, though founded on a series of judicial decisions, by which these courts held themselves bound to decide that such Bond was not illegal. The question arose on the words of the *stat. 31 Eliz. c. 6.* Some dissatisfaction has been expressed at this determination of the Lords: and it has been supposed, that a different judgment might be given on a future occasion. See *Cases in Parliament, 8vo. title Clergy, Ca. 3.* But it is generally understood that the Lords, to prevent inconsistencies in their judgments, will never permit a question of law, once decided in that house, to be debated again. With respect to the influence which the judgments of the inferior Courts ought to have upon the House of Lords, it has been suggested that a distinction may be made between cases arising merely on the Common Law, and cases which depend on the construction of a statute. A series of decisions in the Courts are the best evidence of the Common Law: and the Lords cannot find any adequate authority to oppose to these decisions in justification of their reversal: but upon the construction of a statute where there is no reason to suspect any variation from the original, they seem as fully competent to determine a question, after any number of decisions in the Courts below, as after the first; and the length of the series can operate no farther

than as an object of general convenience. See 2 *Comm. c. 18. and the note there.*

On the general question of the Jurisdiction of the Lords' House of Parliament; see Lord *Hale's* Treatise on that subject, and Mr. *Hargrave's* learned Preface prefixed. Mr. *Hargrave*, after recounting the various contests between the two Houses of Parliament on this subject, states the result in the following terms.

From the year 1717 there has been an absolute cessation of hostility between the Lords and Commons on the right of Judicature in Parliament. The Lords have ceased to encourage interference with the judicature of the Commons over the rights of election—ceased to meddle with original jurisdiction—ceased to countenance attempts to introduce original causes under the disguise of being Appellants—ceased to extend their exercise of appellat jurisdiction beyond examining judgments at law under writs of error; and decrees of Courts of Equity upon petition of appeal—ceased to meddle with appeals from sentences of Ecclesiastical Courts, and other courts of special jurisdiction—ceased to advance claims of universal jurisdiction, both original and appellant—ceased to state themselves as being the virtual, absorbing, and inherent representatives of the King and Commons in matter of judicature, and in effect for that purpose the full and whole Parliament; and as such the supreme and last resort. On the other hand, the Commons have ceased to interrupt the exercise of appellat jurisdiction by the Lords over the decrees of Courts of Equity—nay, they have even forborne to revive considering the right of the Lords to *fine* the Commons of *England* for breach of privilege, and to imprison them on that account beyond the sitting of Parliament: notwithstanding the objections heretofore so strongly urged against both of these practices; and notwithstanding the laudable abstinence of the Commons themselves from attempting to vindicate the breach of their own privileges, otherwise than by an imprisonment, which, if not sooner determined by their own act, of course ceases when Parliament is either dissolved or prorogued. Thus at length the Lords have so long acquiesced in the condemnation of their exercise of *original* jurisdiction, that it seems as if they had never claimed it: and the Commons have so long acquiesced in the exercise of *appellant* jurisdiction by the Lords, that it now seems as if it had never been disputed; and however irregular that appellat judicature might be in its origin, it has obtained sanction from long practice.

By the Writ of Error as now in use, and which appears to have continued, in the same form, from at least the year 1624, after mentioning the King's being informed of error, the King commands the record and process to be sent into Parliament, "that inspecting the record and process aforesaid we may cause further to be done thereupon by the assent of the Lords Spiritual and Temporal, in the same Parliament assembled, for amending the said error, as of right, and according to the law and custom of *England* shall be meet to be done."

VI. (A) As the House of Lords seems to be politically constituted, for the support of the rights of the Crown; so the province of the House of Commons is to stand for the preservation of the People's liberties. The Commons, in making and repealing laws, have equal

power with the Lords; and for laying taxes on the Subject, the bill is to begin in the House of Commons. And as formerly the laying and levying of new taxes have caused rebellions and commotions, this has occasioned, (particularly *anno 9 E. 3.*) when a motion has been made for a subsidy of a new kind, that the Commons have desired a conference with those of their several counties and places, whom they have represented, before they have treated of any such matters. 4 *Inst.* 34.

It is the antient indisputable privilege and right of the House of Commons, that all grants of subsidies or parliamentary aids, do begin in their House, and are first bestowed by them; although their grants are not effectual, to all intents and purposes, until they have the assent of the other two branches of the Legislature. 4 *Inst.* 29. The general reason given, for this exclusive privilege of the House of Commons, is, that the supplies are raised upon the body of the people, and therefore it is proper that they alone should have the right of taxing themselves. This reason would be unanswerable if the Commons taxed none but themselves; but it is notorious, that a very large share of property is in the possession of the House of Lords; that this property is equally taxable, and taxed, as that of the Commons; and therefore the Commons not being the *sole* persons taxed, this cannot be the reason of their having the *sole* right of raising and modelling the supply. The true reason, arising from the spirit of our constitution, seems to be this; the Lords being a permanent hereditary body, created at pleasure by the King, are supposed more liable to be influenced by the Crown, and when once influenced, to continue so, than the Commons, who are a temporary elective body, freely chosen by the people; it would therefore be extremely dangerous to give the Lords any power of framing new taxes for the subject; it is sufficient that they have a power of rejecting, if they think the Commons too lavish or improvident in their grants. But, so reasonably jealous are the Commons of this valuable privilege, that herein they will not suffer the other House to exert any power, except that of rejecting. They will not permit the least alteration or amendment to be made by the Lords to the mode of taxing the people by a money bill; under which appellation are included all bills by which money is directed to be raised upon the Subject, for any purpose, or in any shape whatsoever; either for the exigencies of Government, and collected from the kingdom in general, as the land-tax; or for private benefit, and collected in any particular district, as by turnpikes, parish rates, and the like. This rule is even extended to all bills for canals, paving, provision for the poor, and to every bill in which tolls, rates, or duties are ordered to be collected; and also to all bills in which pecuniary penalties and fines are imposed for offences. 3 *Hats.* 110. But perhaps it is carried beyond its original spirit and intent, when the money raised is not granted to the Crown. Yet Sir *Matthew Hale* mentions one case, founded on the practice of Parliament in the reign of *Henry VI.* wherein he thinks the Lords may alter a money bill; and that is, if the Commons grant a tax, as that of tonnage and poundage, for *four years*; and the Lords alter it to a less time, as for *two years*; here, he says, the bill need not be sent back to the Commons for their concurrence, but may receive the royal assent without farther ceremony; for the alteration of the Lords is consistent with the grant of the

Commons. See *Hale on Parliaments*, 65, 6: *Year-Book*, 33 *Hen. 6*, 17. But such an experiment will hardly be repeated by the Lords, under the present improved idea of the privilege of the House of Commons; and, in any case where a money bill is remanded to the Commons, all amendments in the mode of taxation are sure to be rejected. And, even if the Commons desire to agree with the amendment, the form is to reject the bill so amended by the Lords, and to bring in a *new* bill containing those amendments, solely for the purpose of preserving the privileges of the Commons. See *post* VII. Upon the application of this rule, there have been many warm contests between the Lords and Commons, in which the latter seem always to have prevailed. See many conferences collected by Mr. *Hatsel*, in his Appendix to the third volume, and particularly in Appendix D; the conference of 20 and 22 *April* 1671; the general question is debated with infinite ability on both sides, but particularly on the part of the Commons, in an argument, drawn up by Sir *Heneage Finch*, then Attorney General; and who there answers the case alluded to by *Hale* from the *Year-Book*.

VI. (B) 1. IN the election of knights, citizens, and burgesses, to represent the counties, cities, and boroughs of the kingdom, consists the exercise of the democratical part of the *British Constitution*: the only true *Sovereignty of the People* being shewn in their choice of their representatives. This choice is, therefore, a matter of such high importance, to the preservation of rational freedom, that the laws have very strictly guarded against any usurpation or abuse of this power by many salutary provisions; which shall be here considered according to the division of the subject made at the beginning of this article.

The true reason of requiring any qualification, with regard to property in voters is, to exclude such persons as are in so mean a situation, that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or wealthy man a larger share in elections than is consistent with general liberty. If it were probable that every man would give his vote freely, and without influence of any kind, then, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote; in electing those delegates, to whose charge is committed the disposal of his property, his liberty, his life. But since that can hardly be expected in persons of indigent fortunes, or such as are under the immediate dominion of others, all popular States have been obliged to establish certain qualifications, whereby some who are suspected to have no will of their own, are excluded from voting; in order to set other individuals, whose wills may be supposed independent, more thoroughly upon a level with each other. 1 *Comm. c. 2. ft. 171*.

This constitution of suffrages is framed upon the wisest principle; steering between the two extremes of too much regard to property on the one hand, or to mere numbers on the other. Only such persons are entirely excluded from being electors as can have no will of their own; there is hardly a free agent to be found who is not, [or may not if he pleases,] be entitled to a vote in some place or other of the kingdom. Nor is comparative wealth or property entirely dis-

regarded in elections; for though the richest man has only one vote at one place, yet if his property be at all diffused, he has probably a right to vote at more places than one, and therefore has many representatives. This, says *Blackstone*, is the spirit of our Constitution; not that it is, in fact, quite so perfect as described; for, he candidly adds, if any alteration might be wished or suggested in the present frame of Parliaments, it should be in favour of a more complete representation of the people. 1 *Comm. c. 2. p. 171*. Perhaps this has been already, in some degree, accomplished; and as one step towards it, and more particularly in order to preserve the right of election as much as possible from being made the instrument of undue influence, it is enacted by *stat. 22 Geo. 3. c. 41.* that no person employed in managing or collecting the duty of excise, customs, stamps, salt, windows, or houses, or the revenue of the post-office, in *Great Britain*, shall vote at any election; and if such person presumes to vote, he shall forfeit 100*l.* By *stat. 43 G. 3. c. 25.* a like incapacity with like penalty is enacted as to officers employed in any department of the revenue in *Ireland*. These acts do not extend to freehold offices granted by letters patent.

(a). To consider, therefore, *first*, the qualifications of *Electors of Knights of the Shire*; or as they are more commonly termed, *Members for the Counties: in Great Britain.*

By *stats. 8 H. 6. c. 7: 10 H. 6. c. 2;* (amended by *stat. 14 Geo. 3. c. 58.* which made the *residence* of the electors and the elected in their respective counties, cities, and boroughs no longer necessary;) the knights of the shire shall be chosen by people, whereof every man shall have freehold, to the value of 40*s.* by the year within the county; which, by subsequent statutes, is to be clear of all charges and deductions, except parliamentary and parochial taxes.

The *stat. 7 & 8 W. 3. c. 25.* requires, that every freeholder shall take an oath that he is a freeholder of the county, and has freehold lands or hereditaments of the yearly value of 40*s.* lying at such a place, within the said county, and that he hath not before polled at the election.

The voter's evidence of the value must, therefore, be received at the poll; but it is not conclusive, and may be contradicted by other evidence, upon a scrutiny or before a committee. The *stat. 18 G. 2. c. 18. § 6.* expressly declares, that public taxes are not to be deemed charges payable out of the estate; and therefore it might be thought to be the plain and obvious construction of the act, that wherever a freeholder has an estate which would yield him 40*s.* before these taxes are paid, or for which he would receive a rent of 40*s.* if he paid the taxes himself, he would have a right to vote: yet an election-committee of the House of Commons [see *post. VI. (B) 3*] has decided, that where a tenant paid a rent, less than 40*s.* but paid parochial taxes, which, added to the rent, amounted to more than 40*s.* the landlord had no right to vote. 2 *Lud. 475.* Two committees have held that the interest of a mortgage is a charge, which, if it reduces the value under 40*s.* takes away the vote; though there is an intermediate decision of a committee in which the contrary was held.

The Knights of Shires are the representatives of the landholders or landed interest of the kingdom; their electors must therefore have estates in lands or tenements within the county represented; these

estates must be freehold, that is, for term of life at least; because beneficial leases for long terms of years were not in use at the making of these statutes; and copyholders were then little better than villeins, absolutely dependent on their lords. This freehold must be of 40*s.* annual value; because that sum would, at the time of passing the statutes, with proper industry, furnish all the necessaries of life, and render the freeholder, if he pleased, an independent man. 1 *Comm.* 172. So that it should seem the first step towards a parliamentary reform, would be rather to restrain, than enlarge, the qualifications of electors; 40*s. per ann.* in the time of *Hen.* 6. being equal to 20*l.* or more of the present day. A consideration not much adverted to, at least not brought forward, by those who seem very anxious to new-model Parliament according to its antient constitution.

The other less important qualifications of the electors for counties in *England* and *Wales* may be collected from the following statutes, *viz.* *stats.* 7 & 8 *W.* 3. c. 25; 10 *Ann.* c. 23; 2 *Geo.* 2. c. 24; 18 *Geo.* 2. c. 18; 19 *Geo.* 2. c. 28; 31 *Geo.* 2. c. 14; 3 *Geo.* 3. c. 24; 20 *Geo.* 3. c. 17; and 30 *Geo.* 3. c. 35. These statutes direct;

That no person under twenty-one years of age shall be capable of voting for any member. This extends to all sorts of members, as well for boroughs as counties, as does also the next, *viz.*

That no person convicted of perjury, or subornation of perjury, or of having asked or received any bribe, shall be capable of voting in any election. *Stat.* 2 *Geo.* 2. c. 24. § 6, 7.

That no person shall vote in right of any freehold, granted to him *fraudulently*, to qualify him to vote. Fraudulent grants are such as contain an agreement to re-convey, or to defeat the estate granted; which agreements are made void, and the estate is absolutely vested in the person to whom it is so granted. And every person who shall prepare or execute such conveyance, or who shall give his vote under it, shall forfeit 40*l.* *Stat.* 10 *Ann.* c. 23. § 1.

To guard the better against such frauds, it is further provided, that every voter shall have been in the actual possession or receipt of the profits of his freehold, to his own use, for twelve calendar months before; except it came to him by descent, marriage, marriage-settlement, will, or promotion to a benefice or office.

That no person shall vote, in respect of an annuity or rent-charge, unless registered with the clerk of the peace twelve calendar months before. Such annuity or rent-charge to be issuing out of a freehold estate; and if it accrues or devolves, by operation of law, within a year before the election, a certificate of it to be entered with the clerk of the peace, before the first day of the election. *Stat.* 3 *Geo.* 3. c. 24: *Heyw.* 145.

That in mortgaged or trust estates, the person in possession, under the above-mentioned restrictions, shall have the vote.

That only one person shall be admitted to vote for any one house or tenement; to prevent the splitting of freeholds, and multiplying votes for election purposes. But this does not extend to cases which arise from operation of law, as devises, descents, &c. As if an estate should descend to any number of females, the husband of each would have a right to vote, if his interest amounted to 40*s.* a-year. And by *stat.* 20 *Geo.* 3. c. 17. § 12. a husband may vote for his wife's right of dower, without an actual assignment of it by metes and bounds. It may happen that two or more votes may be given, successively, for

the same estate or interest, at the same election; as where a freeholder votes and dies, his heir or devisee may afterwards vote at the same election. And it seems to be generally true, that where no length of possession is required, by any act of Parliament, the elector may be admitted to vote, though his right accrued since the commencement of the election. 1 *Dougl.* 272: 2 *Lud.* 427.

That no estate shall qualify a voter, unless the *estate* has been, at all events, assessed to some land-tax aid for at least twelve months next before the election; and, for six months before the election, either in the name of the voter, or his tenant, or of the tenant actually occupying the same; but if he has acquired it by marriage, descent, or other operation of law, in that case it must have been assessed to the land-tax, within two years before the election, either in the name of the predecessor, or person through whom the voter derives his title, or in the name of the tenants of such person, or in the name of the tenant actually occupying the same. And see *stat.* 30 *Geo.* 3. c. 35; by which it is provided, that a person may vote for lands, &c. assessed for six months in his own (*i. e.* the voter's) name, or for lands coming by descent, &c. assessed within two years in the name of his predecessor, &c. *though the name of the tenant is not mentioned.* And a person may vote for lands, assessed for six months in the name of the actual tenant, *though the name of the voter, or his predecessor, &c. is not mentioned.* The statutes do not extend to fee-farm rents, (duly registered and issuing out of assessed lands,) chambers in Inns of Courts, or seats belonging to public offices, which are not usually assessed to the land-tax.—See also 42 *Geo.* 3. c. 116. § 200. that persons claiming to vote for lands, &c. where the land-tax has been redeemed (see title *Land-tax*), shall be entitled to vote upon proving such redemption.

In *Ireland*, the electors of the Knights of the Shire must have 40*s.* a-year freehold in the county: and such freehold must be duly registered. See the *Irish* acts, 33 *H.* 8. *st.* 2. c. 1. § 2: 35 *Geo.* 3. c. 29: 37 *Geo.* 3. c. 47: and the act 45 *Geo.* 3. c. 59.

That no tenant by copy of Court-roll shall be permitted to vote as a freeholder. See title *Copyhold*.

(*b.*) The *Electors of Citizens and Burgesses* are supposed to be the mercantile part, or trading interest of the kingdom. But as trade is of a fluctuating nature, and seldom long fixed in a place, it was formerly left to the Crown to summon, *pro re natâ*, the most flourishing towns to send representatives to Parliament. So that as towns increased in trade, and grew populous, they were admitted to a share in the Legislature. But the deserted boroughs continued to be summoned as well as those to whom their trade and inhabitants were transferred; except a few, which petitioned to be eased of the expense, then usual, of maintaining their members; 4*s.* a day being allowed for a knight of the shire, and 2*s.* for a citizen or burgess; which was the rate of wages established in the reign of *Edward III.*: 4 *Inst.* 16. Hence the members for boroughs now bear above a quadruple proportion to those for counties; and the number of Parliament-men is increased since *Fortescue's* time, in the reign of *Henry VI.* from 300 to upwards of 500, exclusive of those for *Scotland* and *Ireland*. The Universities were in general not empowered to send burgesses to Parliament; though once in 28 *E.* 1. when a Parliament was summoned to consi-

der the King's right to *Scotland*, there were issued writs which required the University of *Oxford* to send up four or five, and that of *Cambridge* two or three, of their most discreet and learned lawyers for that purpose. *Prynne Parl. Writs*, i. 345. But it was King *James I.* who indulged them with the permanent privilege, to send constantly two of their own body, to serve for those students, who, though useful members of the community, were neither concerned in the landed nor the trading interest; and to protect, in the Legislature, the rights of the Republic of Letters. 1 *Comm. c. 2. p.* 174.

Mr. *Christian*, in his note on the above passage, quotes *Prynne*, to shew that the wages formerly given to members of Parliament had no other origin than that principle of natural equity and justice, *qui sentit commodum sentire debet et onus*. Mr. *Christian* suggests, that representation, at the first, was nothing more than the attendance of part of a number who were all individually bound to attend, and where the attendance of the rest was dispensed with; and as all were under the same obligation to render this service, and it was left to themselves to determine which of them should undertake it, it became equitable, that all should contribute to the expense and inconvenience incurred. *Prynne* says, the first writs *de expensis militum, &c.* are coeval with our Kings' first writs of summons to elect and send knights, citizens, and burgesses to Parliament, *viz. anno 49 Hen. 3.*; before which there are no memorials of either of those writs. These expenses were reduced to the certainty above-mentioned, of 2*s.* and 4*s. per day*, in the 16th of *E. II.*; though there are some instances where a less sum was allowed; and even one in 3 *E. 4.* 1463, where Sir *John Strange*, the member for *Dunwich*, agreed to take a cade and half a barrel of herrings as a composition for his wages. *Glanv. Rep. Pref. p.* 23.

Andrew Marvell, member for *Hull*, in the Parliament after the Restoration, was, it is said, the last member who received these wages; and they were formerly of so much consequence, that many boroughs petitioned to be excused from sending members to Parliament, on account of the expense. *Pryn. on 4 Inst. 32.* And from 33 *E. 3.* uniformly through the five succeeding reigns, the Sheriff of *Lancashire* returned, that there were no cities or boroughs in his county that ought or were used, or could, on account of their poverty, send any citizens or burgesses to Parliament. 1 *Comm. c. 174, in n.*

By reason of these exemptions, and new creations, by royal charter, which commenced in the reign of *Ed. IV.* who, in the 17th year of his reign, granted to the borough of *Wenlock* the right of sending one burgess to Parliament, (*Sim. 97.*) the number of the members of the House of Commons perpetually varied. *Charles II.* in the 29th year of his reign, granted, by his charter, to *Newark*, the privilege of sending representatives to Parliament; and this was the last time that this prerogative of the Crown was exercised. 1 *Dougl. El. 69.* Since the beginning of the reign of *Henry VIII.* the number of the representatives of the Commons has been more than doubled; for in his first Parliament the house consisted only of 298 members: 360 have since been added by acts of Parliament, or by the King's charter, either creating new, or reviving old boroughs. Under the provision of the acts 27 *H. 8. c. 26. § 29* & 34, 35 *H. 8. c. 26. § 27.* there were added 24 for *Wales*; 12 precisely by the first act for the counties, and 12 under the provision of the latter act for the boroughs. Two for the

county, and two for the city of *Chester*, were added by *stat. 34, 35 Hen. 8. c. 13*. Two for the county, and two for the city of *Durham*, by *stat. 25 Car. 2. C. 9*:—45 for *Scotland*, by the acts of union with that Kingdom; and 100 for *Ireland*, by the acts of union with that Kingdom; and the remainder by charter.

The number of the House of Commons may therefore be stated thus:

	Members.
In the first Parliament of <i>Hen. VIII.</i> - - - -	298
Created since by positive statute, - - - -	168
Created or restored by charter, &c. <i>viz.</i> by <i>Hen. VIII. 16</i> : by <i>Ed. VI. 48</i> : <i>Mary, 21</i> : <i>Eliz. 60</i> : <i>Jac. I. 27</i> : <i>Car. I. 18</i> : <i>Car. II. 2.</i>	192
	} 658

Of these, there are elected

For <i>England</i> - - - -	489	
<i>Ireland</i> - - - -	100	} 658
<i>Scotland</i> - - - -	45	
<i>Wales</i> - - - -	24	

The number of places, which send members, and the numbers of knights, citizens, burgesses, and barons, respectively sent by the several counties, cities, boroughs, and places throughout the United Kingdom, will appear by the following statement:

117 Counties.	{	<i>England</i> 40	}	2 each	{	80	} Knights, (in <i>Scotland</i> also called Com- missioners) of Shires.	186
		<i>Ireland</i> 32						
		<i>Scotland</i> { 27	}	3 alternately	{	27		
		6						
		<i>Wales</i> 12	}	1 each	{	12		
Total 117 Counties								
32 Cities.	{	<i>England</i> { 23	}	2 each	{	46	} Citizens 60	
		1						}
		<i>Ireland</i> { 2	}	5 1 each	{	5		
		5						}
<i>Scotland</i> 1								
222 Boroughs	{	<i>England</i> { 165	}	2 each	{	330	} Burgesses 396	
		1						}
		<i>Ireland</i> { 26	}	1 each	{	26		
		14						}
		<i>Scotland</i> { 14	}	1 each	{	10		
<i>Wales</i> { 10	}	1					{	2
1								
3 Uni- versities.	{	<i>England</i> 2	}	2 each	{	4	} Barons 16	
		<i>Ireland</i> 1						}
8 Cinque Ports, &c.	{	<i>England</i> { 3	}	3 Bran- ches	{	6	} Barons 16	
		2						}

382 Places - - - choose - - - Members 658								

In *England*, *London* is the city which sends four members; the city of *Ely* does not send one; *Weymouth* and *Melcombe-Regis* is the

borough sending four members; the five boroughs sending one member each, are *Abingdon, Banbury, Bedley, Higham-Ferrers, and Monmouth*; the Universities are *Oxford and Cambridge*; the Cinque Ports are *Hastings, Dover, Sandwich, Romney and Hithe*; and the three branches, *Rye, Winchelsea, and Seaford*. In *Scotland*, the six counties sending alternately are *Bute and Caithness, Nairne and Cromartie, Clackmanan and Ross*, each two sending one alternately; *Edinburgh* is the city sending one. In *Ireland*, the cities sending two are *Dublin and Cork*; those sending one are *Kilkenny, Limerick, Londonderry, Cashel and Waterford*; the university is *Dublin*. In *Wales, Pembroke* is the borough sending two; *Merioneth* does not send one.

The right of election in boroughs is various; depending entirely on several charters, customs, and constitutions of the respective places, which have occasioned infinite disputes. In some measure to prevent this evil, the *stat. 7 & 8 W. 3. c. 7.* enacted, that the determination of the House of Commons, (the old judicature in cases of contested elections,) as to the right of election, should bind the returning officer, in taking the poll. That statute was enlarged by *stat. 2 Geo. 2. c. 24.* by the 4th section of which the last determination of the House of Commons was declared to be final. The statutes which established the modern judicature of election-committees, did not transfer to them the same power of specially determining on the right of election; but by *stats. 28 Geo. 3. c. 52. § 25—30: 34 Geo. 3. c. 83.* such committees are invested with the power of binding, by their decision, the right of election; and of appointing a returning officer where the right is litigated; subject to an appeal, by petition to the House within fourteen days after the commencement of the next sessions, and not otherwise. Such petition to be referred to another committee of the House, to be chosen according to the regulations of the said statutes. The determination of such appellate committee, (or of the first committee, if not appealed against,) is now, therefore, conclusive in all subsequent elections. See *post 3.*

By *stat. 3 Geo. 3. c. 15.* no freeman of the city or borough (other than such as claim by *birth, marriage, or servitude*;) shall be entitled to vote therein, unless he hath been admitted to his freedom twelve calendar months before. This is called the *Durham Act*, and it was occasioned by the Corporation of *Durham* having, upon the eve of an election, in order to serve one of the candidates, admitted 215 honorary freemen. Some corporations have the power of admitting honorary freemen, *viz.* persons who, without any previous claim or pretension, are admitted to all the franchises of the corporation. The *Durham Act* is confined to persons of that description solely. It has frequently been contended, that if honorary freemen are created for the *occasion*, that is, merely for an election purpose, it is a fraud upon the rights of election; and that, by the Common Law, as in other cases of fraud, the admission and all the consequences would be null and void; that within the year, by the statute, fraud was presumed; but that after that time, the statute left the necessity of proving it upon those who imputed it. But in the *Bedford* case, the committee were clearly of opinion, that the objection of occasionality did not lie against freemen made above a year before the election. *2 Dougl. El. 91.* As to the right of election in the borough of *New Shoreham*, see *stat. 11 Geo. 3. c. 55.* and in the city of *Coventry*, *stat. 21 Geo. 3. c. 54.*

No length of possession is required from voters in burghage, tenure-boroughs. There are about 29 burghage-tenure boroughs in *England*, 1 *Dougl.* 224. In these the right of voting is annexed to some tenement, house or spot of ground, upon which a house in antient times has stood. Any number of these burghage-tenure estates may be purchased by one person, which, at any time before a contested election, may be conveyed to so many of his friends, who would each in consequence have a right to vote.

By *stat.* 26 *Geo.* 3. *c.* 100. it is enacted, that in boroughs, (in *England*;) where the householders or inhabitants of any description claim to elect, no person shall have a right to vote as such inhabitant, unless he has actually been resident in the borough, six months previous to the day on which he tenders his vote. By an *Irish* act, 35 *Geo.* 3. *c.* 29. § 55, &c. inhabitants of boroughs in *Ireland*, claiming to vote, must be registered at the sessions of the county twelve months before the election.

By *stat.* 13 *Geo.* 2. *c.* 20. the statutes for preventing fraudulent conveyances to multiply votes on electing knights of shires, (see *ante a.*) are made to extend to lands or tenements, for which any persons shall vote for the election of members to serve in Parliament for any city or town, *that is a county of itself*; and if any person votes at such election as a freeholder, not having his estate a year before, he is liable to the penalties imposed on unqualified voters at county elections.

It has been already observed, that the question who are or ought to be the electors in boroughs, hath very much exercised the *British* House of Commons: *Anno* 22 *Jac.* 1. it was resolved, that where there is no charter or custom to the contrary, the election in boroughs is to be made by all the householders, and not freeholders only: and in a question whether the Commons, or the capital burgesses of a certain borough in *Lincolnshire*, were the electors of members of Parliament, *anno* 4 *Car.* 1. it was agreed, that the election of burgesses, in all boroughs, did of common right belong to the commoners; and that nothing could take it from them but a prescription and constant usage beyond the memory of man. It has been holden, that the commonalties of cities and burghs are only the ordinary and lower sort of citizens, burgesses or freemen; and that the right of election of burgesses to Parliament in all boroughs, belongs to the commoners, *viz.* the ordinary burgesses or freemen; and not the Mayor, Aldermen, and Common Council; though the meaning of the words *communitates civitatum & burgorum*, has always signified, rightly understood, the Mayor, Aldermen, and Common Council, where they were to be found; or the steward or bailiff, and capital burgesses, or the governing parts of cities and towns, by what persons soever they were governed, or titles called. *Dict.*

VI. (B) 2. As to the qualifications of persons to be *elected* members of the House of Commons, some of these depend upon the law and custom of Parliament, declared by the House of Commons. 4 *Inst.* 47, 8. Others upon certain statutes. And from these it appears,

That they must not be aliens born, 12 & 13 *W.* 3. *c.* 2. § 3.—nor minors, 7 & 8 *W.* 3. *c.* 25. § 8.

They must not be any of the twelve Judges, because they sit in the

Lords' House. But persons who have judicial places in the other Courts, ecclesiastical or civil, are eligible. 4 *Inst.* 47. Nor of the Clergy; the reason assigned for which is, that they might sit in the convocation. Nor persons attainted of treason or felony, for they are unfit to sit any where. 4 *Inst.* 47: 1 *Comm.* 175.

With respect to the Clergy, their right or capacity of sitting in Parliament was for a long time contested; but at length, by 41 G. 3. (*U. K.*) c. 63. it was enacted, that no Person having been ordained to the office of Priest or Deacon, or being a minister of the Church of *Scotland*, shall be capable of being elected to serve in Parliament as a member of the House of Commons. The election of such persons is declared void; and if any person after his election is ordained, he must vacate his seat. The penalty for any person sitting as a member, contrary to this act, is 500*l.* a-day: and proof of having celebrated divine service is declared *prima facie* evidence of the party being ordained, &c.

As attendance of this nature is for the service of the public, the whole nation has such an interest therein, that the King cannot grant an exemption to any person from being elected as a knight, citizen, or burgess in Parliament; and for that elections ought to be free. 29 *Hen.* 6. And persons who are eligible might formerly in all cases, and may still in some, be compelled to serve in Parliament against their consent. See 1 *Dougl. El. Ca.* 284.

Sheriffs of counties, and mayors and bailiffs of boroughs, are not eligible in their respective jurisdictions, as being returning officers. *Bro. Abr.* title *Parliament* 7: *Hal. of Parl.* 114. But Sheriffs, of one county are eligible to be knights of another. 4 *Inst.* 48: *Whitelocke on Parl. ch.* 99, 100, 101.

Thus it has been decided, that the Sheriff of *Berkshire* could not be elected for *Abingdon*, a borough within that county. 1 *Doug. El. Ca.* 419. But a Sheriff of *Hampshire* may be elected for the town of *Southampton* within that county; because *Southampton* is a county of itself, and is as independent of *Hampshire* as of any other county. 4 *Doug.* 87. It seems that the expression, that Sheriffs of one county are eligible to be knights of another, is too confined; as they may be also members for any city or borough not in the county for which they are Sheriffs.

The eldest son of a Peer of *Scotland* is incapacitated from being elected to represent a *Scotch* county. *Lord Daer's Case*, 26 *Mar.* 1793. *Parliament Cases*, 8vo.

In strictness, all members ought to have been inhabitants of the places for which they are chosen. *Stats.* 1 *Hen.* 5. c. 1: 23 *Hen.* 6. c. 15; but this having been long disregarded, was at length entirely repealed, as has already been mentioned, by *stat.* 14 *Geo.* 3. c. 58.

No persons concerned in the management of any duties or taxes, created since 1602, (except the commissioners of the treasury, *stat.* 5 *W. & M.* c. 7. § 57;) nor any of the officers following, *viz.* commissioners of prizes, transports, sick and wounded, wine licences, navy and victualling; secretaries, or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations, and their deputies; officers of *Minorca* or *Gibraltar*; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretary of state, salt, stamps, appeals, wine-licences, hackney-coaches, hawkers, and pedlars; nor any persons that hold any new

office or place of profit under the Crown since 1705, are capable of being elected or sitting as members. See *stats.* 11 & 12 *W. 3. c. 2.* § 150, 151, 152; 12 & 13 *W. 3. c. 10.* § 89, 90; 6 *Ann. c. 7.* § 25—31; 15 *Geo. 2. c. 22.*

No person having a pension under the Crown during pleasure, or for any term of years, is capable of being elected or sitting. *Stat. 6 Ann. c. 7.* § 25; *stat. 1 G. 1. stat. 2. c. 56.*

If any member accepts an office of profit under the Crown, which was in existence prior to 1705, except an officer in the army or navy accepting a new commission, his seat is vacated; but such member is capable of being re-elected. *Stat. 6 Ann. c. 7.* § 26.

All the persons thus enumerated are utterly incapable of sitting in the House of Commons, whilst they continue in their respective situations. But by *stat. 15 Geo. 2. c. 22.* § 3. the treasurer or comptroller of the navy, the secretaries of the treasury, the secretary to the Chancellor of the Exchequer, secretaries of the Admiralty, under-secretary to any of the secretaries of state, deputy pay-master of the army, and persons having an office or employment for life, or during good behaviour, are expressly excepted from the prohibition, and are therefore eligible.

By *stat. 22 Geo. 3. c. 45.* no contractor with the officers of government, or with any other person for the service of the public, shall be capable of being elected, or of sitting in the House, as long as he holds any such contract, or derives any benefit from it. But this does not extend to contracts with corporations, or with companies, which then consisted of ten partners; or to any person to whom the interest of such a contract shall accrue by marriage or operation of law, for the first twelve months. And if any person disqualified by such a contract shall sit in the House, he shall forfeit 500*l.* for every day; and if any person who engages in a contract with government admits any member of Parliament to a share of it, he shall forfeit 500*l.* to the prosecutor. By 39 *G. 3. c. 94.* the Master of the Mint is declared not to be a contractor within the meaning of 22 *G. 3.*

By the *Irish* acts, 33 *Geo. 3. c. 41.* & 38 *Geo. 3. c. 36.* persons are incapacitated from being elected members of Parliament, if holding places, pensions, &c. under his Majesty, or the Lord Lieutenant, upon principles partly similar to those hereinbefore stated as imposed by the *British* acts; but not to so great an extent. By 41 *Geo. 3. (U. K.) c. 52.* it is expressly enacted, that all persons disabled from sitting in the *British* Parliaments shall in future be disabled from sitting in the Parliaments of the United Kingdom of *Great Britain* and *Ireland*, as members for any place in *Great Britain*: and that all persons disabled from sitting in *Irish* Parliaments should be disabled from sitting in the united Parliament for any place in *Ireland*. And the several other incapacities imposed by the *British* acts on *British* members, are enumerated and extended to the members for *Ireland*; with certain modifications.

The office or trust of a member of Parliament cannot be resigned; and every member is compellable to discharge the duties of it, unless he can shew such cause as the House, in its discretion, will think a sufficient excuse for his non-attendance, upon a call of the House; the only way, therefore, of vacating a seat, is by accepting a situation, in consequence of which the law declares his seat vacant. So where members wish to vacate their seats and retire from Parlia-

ment, it is now usual for the Crown to grant them the office of the stewardship of the Chiltern Hundreds. Mr. *Hatsel* observes, "that the practice of accepting this nominal office, which began (he believes) only about the year 1750, has been now so long acquiesced in, from its convenience to all parties, that it would be ridiculous to state any doubt about the legality of such a proceeding; otherwise (he believes) it would be found very difficult, from the form of these appointments, to shew that it is an office of profit under the Crown." 2 *Hats.* 41. It is observable, that the words of the act are, "office, or place of profit;" perhaps, therefore, it is sufficient if the office is new, though not of profit, for in another part of the act the words *office of profit* are used: the distinction may seem trifling, but for a good purpose it may be applicable. This mode of vacating a seat has been repeatedly denied to such members as, for any offences, are liable to expulsion from Parliament; and would thus wish to avoid the disgrace of such expulsion.

All knights of the shire shall be actual knights, or such notable esquires and gentlemen as have estates sufficient to be knights, and by no means of the degree of yeoman. *Stat. 23 Hen. 6. c. 15.* This by the *stat. de militibus*, 1 *E. 2.* was 20*l.* a year, and put in force against those who had 40*l.* a year till 16 *Car. 1. c. 16.* But it is now reduced to a certainty, by ordaining,

That every Knight of a Shire shall have a clear estate of freehold or copyhold, or mortgage, if the mortgagee has been seven years in possession, to the value of 600*l. per annum*; and every Citizen and Burgess to the value of 300*l.*; except the eldest sons of Peers, and of persons qualified to be knights of shires, and except the members for the two Universities. *Stat. 9 Ann. c. 5.* This somewhat balances the ascendancy which the boroughs have gained over the counties, by obliging the trading interest to make choice of landed men; and of this qualification the member must make oath, and give in the particulars in writing, at the time of his taking his seat. But this act does not extend to *Scotland* nor *Ireland*.

With the exception of these standing restrictions and disqualifications, and some others by particular acts relating to certain special commissioners appointed from time to time for public purposes, every Subject of the realm is eligible of common right; though there are instances wherein persons, in particular circumstances, have forfeited that common right, and have been declared ineligible for that Parliament, by a vote of the House of Commons: (see *ante*;) or for ever, by an act of the Legislature. *Stat. 7 Geo. 1. c. 28.* But it was an unconstitutional prohibition, which was grounded on an ordinance of the House of Lords, and inserted in the King's writs, for the Parliaments holden at *Coventry*, 6 *Henry 4.*, that no apprentice or other man of the law should be elected a knight of the shire therein. 4 *Inst.* 10, 48: *Prynne's Plea for Lords*, 379: 2 *Whitelocke* 359, 368: *Prynne on 4 Inst.* 13. In return for which our law books and historians have branded this Parliament with the name of *Parliamentum indoctum*, or the lack-learning Parliament. And Sir *E. Coke* observes, with some spleen, that there was never a good law made thereat.—*Walsingh. A. D.* 1405: 4 *Inst.* 48.

It is said by some writers, that in antient times the King hath nominated the very persons to be returned, and did not leave it to the election of the people; for which an instance is given in the 45th

year of *Ed. III.* And among the Parliament writs 14 *Eliz.* there appears to be an appointment and return of burgesses by the Lord of a town, &c. But these are single instances in their kind. *Dict.*

3. THE method of proceeding in *Elections* is regulated, from first to last, by the law of Parliament, and a vast variety of statutes; the effect of which is given in the ensuing pages, the provisions of the several statutes being blended together. The following are the *British* statutes on which this abridgment is founded, *viz.* *Stats.* 7 *H.* 4. c. 15: 8 *H.* 6. c. 7: 23 *H.* 6. c. 14: 2 *W. & M. st.* 1. c. 7: 5 & 6 *W. & M. c.* 20: 7 *W.* 3. c. 4: 7 & 8 *W.* 3. cc. 7, 25: 10 & 11 *W.* 3. c. 7: 12 & 13 *W.* 3. c. 10: 6 *Ann. c.* 23: 9 *Ann. c.* 5: 10 *Ann. cc.* 19, 33: 2 *Geo.* 2. c. 24: 8 *Geo.* 2. c. 30: 18 *Geo.* 2. c. 18: 19 *Geo.* 2. c. 28: 10 *G.* 3. c. 16: 11 *Geo.* 3. c. 42: 28 *Geo.* 3. c. 52: and several others, which are occasionally particularized.

In case of a new Parliament, as soon as it is summoned by the King, the Lord Chancellor sends his warrant to the Clerk of the Crown in Chancery; *who thereupon issues out writs to the Sheriff of every county, for the election of all the members to serve for that county, and every city and borough therein.*

If a vacancy happens by the death, &c. of any member during the sitting of Parliament, the Speaker may, by order of the House, send his warrant to the Clerk of the Crown; who thereupon proceeds as in other cases where the warrant is sent by the Lord Chancellor. And with regard to a vacancy happening by death or peerage during the prorogation or recess of Parliament, the *stat.* 24 *Geo.* 3. *st.* 2. c. 26. which repeals the former statutes upon this subject, provides, that if, during any recess, any two members give notice to the Speaker, by a certificate under their hands, that there is a vacancy by death, or that a writ of summons has issued under the great seal, to call up any member to the House of Lords, the Speaker shall forthwith give notice of it to be inserted in the *Gazette*; and at the end of fourteen days after such insertion he shall issue his warrant to the Clerk of the Crown, commanding him to make out a new writ for the election of another member; but this shall not extend to any case where there is a petition depending for such vacant seat; or where the writ, for the election of the member so vacating, had not been returned fifteen days before the end of the last sitting of the House; or where the new writ cannot issue before the next meeting of the House for the dispatch of business. And to prevent any impediment in the execution of this act, by the Speaker's absence from the kingdom, or by the vacancy of his seat, at the beginning of every Parliament he shall appoint any number of members from three to seven inclusive, and shall publish the appointment in the *Gazette*; these members in the absence of the Speaker shall have the same authority as is given to him by the statute; these are the only cases provided for by act of Parliament; for any other species of vacancy, therefore, no writ can issue during a recess of Parliament.

Within *three days*, (or in the Cinque-Ports within six days, *stat.* 10 & 11 *W.* 3. c. 7.) after the receipt of this writ out of Chancery, the Sheriff is to send his precept, under his seal, to the proper returning officers of the cities and boroughs, commanding them to elect their members; and those returning officers are to proceed to election *within eight days* from the receipt of the precept, giving four days

notice of the same; and to return the persons chosen, together with the precept, to the Sheriff. In the borough of *New Shoreham*, in *Sussex*, wherein certain freeholders of the county are entitled to vote by *stat. 11 Geo. 3. c. 55.* the election must be within twelve days, with eight days' notice of the same.

But elections of Knights of the Shire must be proceeded to by the Sheriffs themselves in person; and, according to former laws, at the next county Court after the delivery of the writ, to be holden at the most usual place in the county. If the county Court fell upon the day of delivering the writ, or within six days after, the Sheriff might have adjourned the Court, and election, to some other convenient time, not longer than sixteen days, nor shorter than ten; but he cannot alter the place without the consent of all the candidates. Now, by *stat. 25 Geo. 3. c. 84.* it is enacted, that the Sheriff having indorsed on the back of the writ the day on which he received it, shall, within two days after the receipt thereof, cause proclamation to be made, at the place where the ensuing election ought by law to be held, of a *special County-Court*, to be there held for the purpose of such election only; on any day, *Sunday* excepted, not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth; and that he shall proceed on such election, at such special County-Court, in the same manner as if the said election had been held at a County-Court, or at an adjourned County-Court, according to the former laws. And by *stat. 33 Geo. 3. c. 64.* all notices of the time and place of election of members of Parliament shall be publicly given, at the usual place, between eight in the morning and four in the afternoon, from *October 25th* to *March 25th*; and, during the other half year, between eight in the morning and six in the afternoon.

And as it is essential to the very being of Parliament, that elections should be absolutely free, all undue influence whatever upon the electors is illegal and strongly prohibited. As soon, therefore, as the time and place of election within counties, or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the poll is ended, except in the liberty of *Westminster*, or other residence of the Royal Family, in respect of his Majesty's guards, and in fortified places; *stat. 8 Geo. 2. c. 30. § 3.* Riots likewise have been frequently determined to make an election void. By vote also of the House of Commons no Lord of Parliament, or Lord Lieutenant of a County, hath any right to interfere in the election of Commoners; and, by statute, the Lord Warden of the Cinque-Ports shall not recommend any members there. If any officer of the excise, customs, stamps, or certain other branches of the revenue, presume to intermeddle in elections, by persuading any voter, or dissuading him, he forfeits 100*l.* and is disabled to hold any office. Consistently with the same principle also, it has been decided, that a wager between two electors, upon the success of their respective candidates, is illegal and void; for were it permitted, it would manifestly corrupt the freedom of elections. 1 *Term Rep. 55.*

Indeed, however the electors of one branch of the Legislature may be secured from any undue influence from either of the other two, and from all external violence and compulsion; the greatest danger is that, in which themselves co-operate, by the infamous practice of

bribery and corruption; to prevent which it is enacted, that no Candidate shall, after the date (usually called the *teste*) of the writs; or after the ordering of the writs, that is, after the signing of the warrant of the Chancellor for issuing the writs, (*Sim.* 165;) or after any vacancy, give any money or *entertainment* to his electors, or promise to give any, either to particular persons, or to the place in general, in order to his being elected, on pain of being incapable to serve for that place in Parliament; that is, incapable of serving upon that election. This is provided by *stat. 7 W. 3. c. 4.* commonly called the Treating-Act. It was decided by one committee, that treating vacates the election only; and that the candidate is no way disqualified from being re-elected, and sitting upon a second return. 3 *Lud.* 455. But a contrary determination was made by the *Southwark* committee in the first session of the Parliament, called in 1796; who declared a candidate disqualified on the ground of his having treated at a former election which was declared void for such treating. It has been supposed, that the payment of travelling expenses, and a compensation for loss of time, were not treating, or bribery, within this or any other statute; and a bill passed the House of Commons to subject such case to the penalties imposed by *stat. 2 Geo. 2. c. 24.* upon persons guilty of bribery. But this bill was rejected in the House of Lords by the opposition of Lord *Mansfield*, who strenuously maintained that the bill was superfluous; that such conduct by the laws in being was clearly illegal; and subject, in a Court of law, to the penalty of bribery. 2 *Lud.* 67.

To guard against still more gross and flagrant acts of bribery, it is enacted by *stat. 2 Geo. 2. c. 24.* explained and enlarged by *stats. 9 Geo. 2. c. 38: 16 Geo. 3. c. 11.* that if any money, gift, office, employment, or reward, be given, or promised to be given, to any voter, at any time, in order to influence him to give or withhold his vote, as well he that takes as he that offers such a bribe, forfeits 500*l.* and is for ever disabled from voting at any election for a member of Parliament, and holding any office in any corporation; unless, before conviction, he will discover some other offender of the same kind, and then he is indemnified for his own offence. But these statutes do not create any incapacity of sitting in the House; that depends solely upon the Treating-Act already mentioned.

It has been held, that it is bribery if a Candidate gives an elector money to vote for him, though he afterwards votes for another. 3 *Burr.* 1235. And there can be no doubt but it would also be bribery in the voter; for the words of the statute clearly make the offence mutual. And it has been decided, that such vote will not be available to the person to whom it may afterwards be given gratuitously; though the propriety of this decision has been questioned by respectable authority. 2 *Doug.* 416. An instance is given in 4 *Doug.* 366. of an action in which twenty-two penalties, to the amount of 11,000*l.* were recovered against one defendant.

Besides the penalties, thus imposed by the Legislature, bribery is a crime at Common Law, and punishable by indictment or information; though the Court of King's Bench will not in ordinary cases grant an information within two years, the time within which an action may be brought for the penalties under the statute. 3 *Burr.* 1335. 1359. But this rule does not affect a prosecution by indictment, or information by the Attorney General; who in one case was ordered

by the House to prosecute two persons who had procured themselves to be returned by bribery. They were convicted and sentenced by the Court of King's Bench to pay each a fine of 1000 marks, and to be imprisoned six months. 4 *Doug.* 292.

Undue influence being thus endeavoured to be effectually guarded against, the election is to be proceeded to, on the day appointed; the Sheriff or other returning officer first taking an oath against bribery, and for the due execution of his office. The Candidates, likewise, if required, must swear to their qualification, or their election shall be void; and the electors in counties to theirs; and the electors both in counties and boroughs are also compellable to take the Oaths of Allegiance and Supremacy, (7, 8 *W. 3. c. 25.*) the Oath of Abjuration, and that against bribery and corruption. And it might not be amiss, says *Blackstone*, if the Candidates were bound to take the latter oath, as well as the former; which in all probability, would be much more effectual, than administering it only to the electors.

By *stat. 34 Geo. 3. c. 73: 42 G. 3. c. 62: & 43 G. 3. c. 74.* in order to expedite the business at elections, the returning officers are enabled, on request of the Candidates, to appoint persons to administer to voters the Oaths of Allegiance, Supremacy, the Declaration of Fidelity, the Oath of Abjuration, &c. and all other Oaths required by law, (except the Bribery Oath, which must be taken as required by 2 *Geo. 2. c. 24.*) *previously to their coming to vote;* and to grant the voters certificates of their having taken the said Oaths; without which certificate the voters shall not be permitted to vote, if they are required to take the Oaths.

By *stat. 25 Geo. 3. c. 84.* all electors for cities and boroughs shall swear to their name, addition, or profession, and place of abode; and also, like freeholders in counties, that they believe they are of the age of twenty-one, and that they have not been polled before, at that election. And by the same statute it is enacted, that if a poll is demanded at any election for any county or place in *England* or *Wales*, it shall commence either that day, or at the farthest upon the next, and shall be continued from day to day (*Sundays* excepted) until it be finished; and that it shall be kept open seven hours at the least, each day, between eight in the morning and eight at night. But should it be continued to the 15th day, then the returning officer shall close the poll at or before three o'clock in the afternoon, and shall immediately, or on the next day, publicly declare the names of the persons who have a majority of votes; and he shall forthwith make a return accordingly, unless a scrutiny is demanded by any Candidate, or by two or more of the electors, and he shall deem it necessary to grant the same; in which case it shall be lawful for him to proceed thereupon; but so as that, in all cases of a general election, (*i. e.* on the calling a new Parliament,) if he has the return of the writ he shall cause a return of the members to be filed in the Crown-Office, on or before the day on which the writ is returnable: if he is a returning officer acting under a precept, he shall make a return of the members at least six days before the day of the return of the writ. But if it is not a general election, then, in case of a scrutiny, a return of the member shall be made within thirty days after the close of the poll; upon a scrutiny the returning officer cannot compel any witness to be sworn, though the statute gives him power to administer an oath to those who consent to take it.

The election being closed, the returning officer in boroughs returns his precept, to the Sheriff; with the names of the persons elected by the majority: and the Sheriff returns the whole, together with the writ for the county, and the names of the Knights elected thereupon, to the Clerk of the Crown in Chancery, before the day of meeting, if it be a new Parliament; or within fourteen days after the election, if it be an occasional vacancy; and this under penalty of 500*l.* If the Sheriff does not return such Knights only as are duly elected, he forfeits, by the old statutes of *Hen. VI.* 100*l.* and the returning officer in boroughs, for a like false return, 40*l.* and they are besides liable to an action, in which double damages shall be recovered, by the latter statutes of King *William*: and any person bribing the returning officer shall also forfeit 300*l.*; but the members returned by him are the sitting members, until upon petition the return shall be adjudged to be false and illegal.

It has been adjudged on *stat. 23 H. 6. c. 7.* that though, according to the statute, no election should be made of any Knight of the Shire, but between eight and eleven of the clock in the forenoon; if the election be begun within that time, and cannot be determined in those hours, it may be made after. And if any electors give their voices before the precept for election is read and published, it will be of no force; for after the precept is thus read, &c. they may alter their voices and make a new election. *4 Inst. 48, 49.*

By *stat. 10 Ann. c. 23.* it is enacted, that the returning officer, within twenty days after the election, is to deliver over to the clerk of the peace, all the poll books on oath made before two justices; to be preserved among the records of the sessions of the peace, &c.

By the *stat. 7 & 8 W. 3. c. 7.* which gives the action for double damages in case of a false return, all *false* returns, wilfully made, are declared to be illegal; and over and above the remedy which the party grieved has, by action under this statute, the returning officer or other person offending, is punishable by the House; which in such cases has generally committed him to custody, and sometimes to *Newgate*. And the accepting and returning of indentures of return, not signed by the proper returning officer in *Scotland*, has been held a false return, and the Under-Sheriff offending committed. *Sim. 181, 2.*

And in order to prevent the evil of *double returns*, it was by the same *stat. 7 & 8 W. 3. c. 7.* enacted, that if the returning officer return more persons than are required to be chosen by the writ of precept, the same remedy may be had by the party grieved, as in case of a false return. And by § 10 of the *stat. 25 Geo. 3. c. 84.* it is provided, that if *no return* shall be made to a *general writ* on or before the return day, or upon a new writ within fifty-two days after the *teste*, or if a special return be made, the party grieved may petition the House against the same; and a committee shall determine whether any and which of the persons named in such petition ought to have been returned, or whether a new writ ought to issue; and the House shall give the necessary orders. And for any offence against this statute, the returning officer is made liable to a prosecution by information or indictment. And if any returning officer shall wilfully delay, neglect, or refuse duly to return a person elected, such person, on the determination of a committee in his favour, may sue the returning officer, and recover double damages. See *stat. 25 Geo. 3. c. 84. §§ 11, 14.*

Where the right of election is doubtful, and consequently it is uncertain that candidates are duly elected, the returning officer may, and for his own safety ought to, make a *double return*. But this must be done upon the returning officer's own judgment, not upon the agreement of the parties. If two or more sets of electors make each a return of a different member, (which is called a *Double Election*,) that return only, which the returning officer, to whom the Sheriff's precept was directed, has signed and sealed, is good. And the members by him returned shall sit until displaced on petition. *Sim.* 184. By the *Irish* act, 35 G. 3. c. 29. the returning officer (even though not otherwise qualified to vote) must in case of an equality of votes at the poll give his casting vote, and make a return.

Where a false return, or a double return, is made, it may be amended at the bar of the House. The former either by taking the return off the file, if made by an illegal returning officer, and annexing to the writ the real return delivered by the legal officer to the clerk of the Crown. Where the Christian name of the party returned is mistaken, it may be rectified; sometimes the amendment is made by erasure of the endorsement of the wrong name, and every thing belonging to it, and by a substitution of the right name. Formerly the returning officer himself used to amend the return; but now it is usually done by the Clerk of the Crown. The double return is amended by taking one off the file. When the return is made, in order to preserve it free from dispute, the Clerk of the Crown is directed to enter it, whether a single or a double return, in a book to be kept for that purpose in his office, within six days after the return; and no amendment or alteration must be made by him or his deputy, or other, of the return, except by order of the House; and such book, or a copy thereof, is directed to be sufficient evidence of the return, in any action to be brought upon that statute; and for any default or omission in such particulars, or for certifying any person returned who was not returned, the Clerk of the Crown is liable to a penalty of 500*l.* to the party grieved, and forfeiture of his office. *Stat.* 7 & 8 W. 3. c. 7; made perpetual by *stat.* 12 Ann. st. 1. c. 15.

In double returns, it has been formerly a general practice in the House of Commons, that neither one nor the other should sit in the House until it be decided. In the year 1640, two returns were made for *Great Marlow*, and in both indentures one person was returned, and he was admitted to sit, but the others ordered to withdraw until the question was determined. And in the same year, it was ordered, that where some are returned by the Sheriff, or such other officer as by law hath power to return, and others returned by private hands; in such case, those returned by the Sheriff, or other officer, shall sit until the election is quashed by the House. *Ordinan.* 1640. If one be duly elected, and the Sheriff, &c. return another, the return must be reformed and amended; and he who is duly elected is to be inserted, for the election is the foundation, and not the return. 4 *Inst.* 49.

Double returns are to be determined before *double elections*; and the return immediately annexed to the writ must be first heard. *Sim.* 184, n.

In an action *on the case*, the plaintiff declared, that he was duly elected a member of Parliament for such a borough, and that the defendant returned two other persons; and that he petitioned the House of Commons, and was adjudged to be duly elected, and his name or-

dered to be inserted in the roll, and the name of the other to be razed out: the plaintiff had a verdict; but it was adjudged, in arrest of judgment, that this declaration was not founded on the *stat. 7 & 8 W. 3. c. 7*, because that statute gave an action where there was none before; therefore the fact must be made agreeable to it, which not being done, defendant had judgment. 2 *Salk.* 504. The Court will not meddle in an action upon a double return, until it is determined in Parliament. *Lutw.* 88. And it hath been holden, that for a double return, no action lay, before the statute *7 & 8 W. 3. c. 7*, because it is the only method the Sheriff had to secure himself; and when the right was decided in Parliament, then one indenture was taken off the file, so that it is not then a double return; neither can the party have an action for a false return, for the matter may be determined in the House whether true or false; and if so, there will be an inconvenience in contrary resolutions, if they should determine one way, and the Courts at law another; but after a dissolution the action may lie for a false return, for then the right cannot be determined in Parliament. 2 *Salk.* 502.

A double return is the same as a false return, as to action on the case; in both it is grounded on the falsity; but there is another reason why this action will not lie for a double return, *viz.* because the law doth not take notice of such a return; it is only allowed by the usage of Parliament, and in cases wherein the proper officer cannot determine who is chosen; therefore, when he doubts, he makes a double return, and submits the choice to the determination of the House of Commons, and if that House admits such returns, and make determinations on them, it will be hard for the law to subject a man to an action only for submitting a fact to be determined by a court, which hath a proper jurisdiction to determine it. 2 *Lev.* 114.

A Member elected and returned for several places, is to make his choice for which place he will serve; and if he doth not, by the time which the House shall appoint, the House may determine for what place he shall continue a member, and writs shall go out for the other place.

The proceedings on elections in *Ireland* are regulated by an *Irish* act, 35 *Geo.* 3. c. 29.

An action on the case lies, by a burgess against the returning officer of a borough, for refusing his vote at an election for members to serve in Parliament. This was decided in an action brought by one *Ashby*, a burgess of *Ailesbury*, against *White & al.* constables of the said borough, for refusing to receive the plaintiff's vote in the election of a member of Parliament; the plaintiff had a verdict, with 5*l.* damages; but the judgment was arrested by the opinion of three Judges, *viz.* that the action is not maintainable, because the constables acted as judges, and the not receiving the plaintiff's vote is *dammun sine injuria*; for when the matter comes before the House, his vote will be received; that the right of electing members to serve in Parliament is to be decided in Parliament, and the plaintiff may petition the House for that purpose; and after it is determined there, he may then bring his action and not before. *Holt*, Chief Justice *contra*; That the plaintiff had a right to vote; a freeholder has a right to vote by reason of his freehold; and it is a real right, and the value of his freehold was not material till the *stat. 8 Hen.* 6. which requires it to be 40*s. per annum*: that as it is *ratione liberi tenementi* in counties;

so, in antient boroughs, they have a right to vote *ratione burgagii*; and in cities and corporations, it is *ratione franchisia*, and a personal inheritance, vested in the whole corporation, but to be used by the particular members; that this is a noble privilege, which entitles the Subject to a share in the government and legislature; and that if the plaintiff hath a right, he must have a remedy to assert that right, for want of right and want of remedy is the same thing: that refusing to take the the plaintiff's vote is an injury, and every injury imports a damage; and that where a Parliamentary matter comes in, incidentally, to an action of property in the King's Court, it must be determined there, and not in Parliament; the Parliament cannot judge of the injury, nor give damages to the plaintiff, and he hath no remedy by way of petition: And, according to this opinion, the judgment of the other three judges was reversed, upon a writ of error brought in the House of Lords; who ordered that the plaintiff should recover his damages assessed by the jury. See *Bro. P. C.* and also 1 *Salk.* 19: 6 *Mod.* 45: 3 *Salk.* 17: 8 *St. Tri.* 89: *Holt* 524: *Ld. Raym.* 938: *Raym. Ent.* 479.

This determination occasioned much disturbance in both Houses of Parliament: and on the 25th of *January* 1704, the House of Commons resolved itself into a committee on the business: and, after a very long and animated debate, came to five resolutions; importing, that the Commons of *England*, in Parliament assembled, had the sole right to examine and determine all matters relating to the right of election of their own members; and that the right was not determinable elsewhere. That the practice of determining the qualifications of electors, in any Court of law, would expose all returning officers to a multiplicity of vexatious suits and insupportable expences; and subject them to different and independent jurisdictions, as well as to inconsistent determinations in the same case, without relief. That *Ashby* was guilty of a breach of privilege, as were all persons bringing actions, and all attorneys, solicitors, counsellors, and serjeants at law, soliciting, prosecuting, or pleading in any case of the same nature. These resolutions, signed by the clerk, were fixed upon the gate of *Westminster-Hall*. The Lords, on their part, passed resolutions in support of their judgment, copies of which and the case itself were sent by the Lord Keeper to all the Sheriffs of *England*; to be circulated through all the boroughs of their respective counties. See *Bro. P. C.* title *Action*. *Smollet's Hist. Eng.* l. 1. c. 8.

Several persons were, in the next session, committed to *Newgate*, under a warrant signed by *Robert Harley*, Speaker of the House of Commons, for prosecuting actions at law against the constables of the borough of *Ailesbury*, who refused to take their votes at the election of members of Parliament, &c. in contempt of the jurisdiction and privileges of the House; and this matter being returned to several writs of *habeas corpus*, and the several persons defendants brought into Court, counsel moved that they might be discharged; for that the prosecution of a suit at law could be no unlawful act, nor a breach of the privilege of the House of Commons: three Judges were of opinion, that the House were the proper judges of their own privileges; and the parties were accordingly remanded, on the ground that the Court of *K. B.* had not jurisdiction. *Holt*, Chief Justice, however held, that the authority of the Commons was circumscribed by law; and if they should exceed that authority, then to say they were judges of their own privileges, is to make their privileges to be

what they would have them to be; and that if they should wrongfully imprison, there could be no redress; so that the Courts at *Westminster* could not execute the laws upon which the liberties of the Subject subsist. 2 *Salk.* 503; 2 *Ld. Raym.* 1105. See *ante* IV. 1; V. 2.

The question, as to this right of action against a returning officer for refusing a vote, was intended to have been decided on a *writ of error*, to review the judgment of the Court of *K. B.*; but some doubt was entertained whether such writ of error lay. 3 *Salk.* 504. And the business was at length put an end to by the prorogation of Parliament; and the determination in *Ashby* and *White* has never since been disputed.

The question, as to the power of the House of Commons to commit for a contempt, was again brought before the Court of King's Bench in the Honourable *Alex. Murray's* case. 1 *Wils.* 299: and before the Court of Common Pleas in the case of *Brass Crosby.* 3 *Wils.* 188: *Black. Rep.* 754. In both which it was ruled, according to the decision in *Salkeld*, that a person committed by the House of Commons for a contempt, cannot be discharged by a Court of Common Law. See this Dictionary, title *Bail* II.

The form and manner of proceeding upon *Petitions* to the House of Commons, in cases of controverted elections, are now regulated by *statute*, 10 *Geo.* 3. c. 16; (made perpetual by *stat.* 14 *Geo.* 3. c. 15;) which directs the method of choosing, by lot, a select committee of fifteen members, who are sworn well and truly to try the same, and a true judgment to give according to the evidence.

This statute 10 *Geo.* 3. c. 16. is best known by the name of *Grenville's Act*; and has been much improved by *stats.* 11 *Geo.* 3. c. 42: 25 *Geo.* 3. c. 84. § 10—12: 28 *Geo.* 3. c. 52: 32 *Geo.* 3. c. 1: 36 *Geo.* 3. c. 59: 42 *Geo.* 3. c. 84. (made perpetual, 47 *Geo.* 3. st. 1. c. 1). By these statutes any person may present a petition, complaining of an undue election: but one subscriber to the petition must enter into a recognizance, himself in 200*l.* with two sureties in 100*l.* each, to appear and support his petition: and then the House shall appoint some day, beyond fourteen days after the commencement of the session, or the return of the writ, and shall give notice to the petitioners, and the sitting members, to attend the bar of the House on that day by themselves, their counsel or agents; this day, however, may be altered, but notice shall be given of the new day appointed. On the day fixed, if 100 members do not attend, the House shall adjourn from day to day; except over *Sundays*, and for any number of days over *Christmas-day*, *Whitsunday*, and *Good Friday*: and on such day the House shall not proceed to any other business, previous to reading the order of the day for taking the petition into consideration, except swearing in members; receiving reports from committees; amending a return; attending his Majesty, or a commission, in the House of Lords; receiving messages from the Lords; proceeding in the prosecution of an impeachment before that House; or proceeding upon the order of the day for the call of the House; and making other orders for enforcing the attendance of members.

By 42 *G.* 3. c. 84. (made perpetual by 47 *G.* 3. st. 1. c. 1.) successive committees may be appointed on the same day, if a competent number of members (*viz.* 120 for 2 committees, 200 for 3, 270 for

4, 360 for 5, 460 for more than 5) attend. Committees shall be attended by short-hand writers.

By 42 G. 3. c. 106. on committees for the trial of *Irish* elections, commissions may be granted into *Ireland* for the examination of witnesses there.

The names of all the members belonging to the House are then put into six boxes or glasses in equal numbers; and the clerk shall draw a name from each of the glasses in rotation, which name shall be read by the Speaker, and if the person is present, and not disqualified, it is put down: and in this manner they proceed till 49 such names are collected. But besides these 49, each party shall select, out of the whole number present, one person, who is called the *Nominee* of that party. Members who have voted at the election in question, or who are petitioners or petitioned against, cannot serve: and persons who are sixty years of age, or who have served before, are excused, if they require it; and others who can shew any material reason, may also be excused by the indulgence of the House. After 49 names are so drawn, lists of them shall be given to the respective parties; who shall withdraw, and shall alternately strike off one (the petitioners beginning) till they are reduced to 13; and these 13, with the two *Nominees*, constitute the select committee. If there are three parties they shall alternately strike off one, and in that case the parties do not appoint *Nominees*, but the 13 shall choose two others, as the *Nominees*. The members of the committee shall then be ordered by the House to meet within 24 hours: and they cannot adjourn for more than 24 hours, except over *Sunday*, *Christmas-day*, and *Good Friday*, without leave of the House; and no member of the Commons shall absent himself without the permission of the House. The committee shall not in any case proceed to business with fewer than 13 members, and they are dissolved if, for three successive days of sitting, their number is less than that; unless they have sate 14 days, and then they may proceed though reduced to 12, and if 25 days to 11; and they continue to sit notwithstanding a prorogation of the Parliament. All the 15 members of the committee take a solemn oath, in the House, that they will give a true judgment according to the evidence; and every question is determined by a majority. The committee may send for witnesses, and examine them upon oath, a power which the House of Commons does not possess; and if they report that the petition or defence is frivolous or vexatious, the party aggrieved shall recover costs. On the close of the whole business, the committee report their determination to the House; who order the return to the writ to be amended accordingly, if necessary, in the manner already stated; and thus the election is definitively decided. See as to the effect of the decisions of these committees, *ante* VI. B. 1. b.

VII. THE mode of making laws is much the same in both Houses. It is proper previously to premise, that for dispatch of business each House of Parliament has its Speaker. The Speaker of the House of Lords, whose office it is to preside there, and manage the formality of business, is the Lord Chancellor, or keeper of the King's great seal, or any other appointed by the King's commission: and, if none be so appointed, the House of Lords (it is said) may elect; and an instance of that nature has occurred in the *Irish* House of Lords. The Speaker of the House of Commons is chosen by the

House; but must be approved by the King. And herein the usage of the two Houses differs, that the Speaker of the House of Commons cannot give his opinion or argue any question in the House; but the Speaker of the House of Lords, if a Lord of Parliament, may.

The Commons antiently had no continual Speaker, but, after consultation, their manner of proceeding was to agree upon some person of great abilities, to deliver their resolutions. In the reign of *William Rufus*, at a great Parliament held at *Rockingham*, a certain knight came forth, and stood before the people, and spake in the name and behalf of them all; who was undoubtedly the Speaker of the House of Commons at that time. The first Speaker certainly known was *Peter de Montford*, 44 H. 3. when the Lords and Commons sat in several Houses, or at least gave their assent severally. *Lex Constitutionis* 162.

Hume is mistaken, who says that *Peter de la Mere*, chosen in the first Parliament of *Ric. II.* was the first Speaker of the Commons. *Vol. 3. p. 3.* And in the rolls of Parliament, 51 Ed. 3. No. 87. it appears, that *Sir Thomas Hungerford* chevalier, *qui avoit les parolles des communes en cest parlement*, addressed the King, in the name of the Commons, in that jubilee year, to pray that he would pardon several persons who had been convicted on impeachments. And there he is not mentioned as if his office was a novelty. 1 *Comm.* 181. *in n.*

Sir Richard Walgrave, 5 R. 2. was the first Speaker who made any formal apology for inability, as now practised: *Richard Rich*, Esq. an. 28 H. 8. was the first Speaker who is recorded to have made request for access to the King. *Thomas Moyle*, Esq. an. 34 H. 8. is said to be the first Speaker who petitioned for freedom of speech; and *Sir Thomas Cargrave*, an. 1 Edz. was the first who made the request for privilege from arrests, &c. *Sir John Bushby*, an. 17 R. 2. was the first Speaker presented to the King, in full Parliament, by the Commons. And when *Sir Arnald Savage* was Speaker, an. 2 H. 4. it was the first time that the Commons were required by the King to choose a Speaker. *Dict.* The salary of the Speaker is now settled at 1500*l.* a quarter, or 6000*l.* a year, under *stat. 30 Geo. 3. c. 10*; which prohibits his holding any office under the Crown during pleasure.

In each House the act of the majority binds the whole; and this majority is declared by votes openly and publicly given.

In the House of Commons the Speaker never votes (unless in committee) except when there is an equality without his casting vote, which in that case creates a majority of the House; but the Speaker of the House of Lords has no casting vote, his vote being connected with the rest of the House; and in the case of an equality the *Non contents*, or negative voices, have the same effect and operation as if they were in fact a majority. *Lords' Journ.* 25 June 1661. The House of Lords in *Ireland* observes the same rule, and in cases of equality *semper præsumitur pro negante*. *Ld. Mountm.* i. 105. Hence the order in putting the question, on appeals and writs of error, is this; "Is it your Lordships' pleasure, that this decree or judgment should be reversed?" for if the votes are equal, the judgment of the Court below is affirmed. *Ib.* ii. 81.

Here it may not be improper to observe, that there is no *casting voice* in Courts of justice; but in the superior Courts, if the Judges are equally divided, there is no decision; and the cause is continued in Court till a majority concur; which they frequently do by consent

merely for the purpose of sending the cause, by appeal, to a higher jurisdiction. At the sessions, the justices, in cases of equality, ought to respite the matter till the next session; but if they are equal one day, and the matter is duly brought before them on another day in the same sessions, and there is then an inequality, it will amount to a judgment: for all the time of the session is considered but as one day. A casting vote sometimes signifies the single vote of a person who never votes but in the case of an equality; sometimes the double vote of a person who first votes with the rest, and then, upon an equality, creates a majority by giving a second vote. A casting vote neither exists in corporations nor elsewhere, unless it is expressly given by statute or charter; or what is equivalent, exists by immemorial usage. 1 *Comm.* 181, *in n.*

With respect to other formalities in the two Houses it may be observed, there are no places of precedency in the House of Commons as there are in the House of Lords; only the Speaker has a chair or seat fixed towards the upper end, in the middle of the house; and the clerk, with his assistant, sits near him at the table, just below the chair. The members of the House of Commons never had any robes, as the Lords ever had, except the Speaker and clerks, who in the House wear gowns, as professors of the law do during term time. No knight, citizen, or burgess of the House of Commons, shall depart from the Parliament without leave of the Speaker and Commons assembled; and the same is to be entered in the book of the Clerk of the Parliament. *Stat. 6 H. 8. c. 16.* And in the 1st & 2d of P. & M. informations were preferred by the Attorney General against thirty-nine of the House of Commons, for departing without licence, whereof six submitted to fines; but it is uncertain whether any of them were paid.

Calling the House is to discover what members are absent, without leave of the House, or just cause; in which cases fines have been often imposed: On the calling over, such of the members as are present, are marked; and the defaulters being called over again the same day, or the day after, and not appearing, are summoned, or sent for by the serjeant at arms. *Lex Constitutionis* 159.

Forty members are requisite to make a House of Commons for dispatch of business; and the business of the House is to be kept secret among themselves. In the 23d year of Queen Elizabeth, Arthur Hall, Esq. member of Parliament, for publishing the conferences of the House, and writing a book which contained matters of reproach against some particular members, derogatory to the general authority, power, and state of the House, and prejudicial to the validity of the proceedings, was adjudged by the Commons to be committed to the Tower for six months, fined 500*l.* and expelled the House. But the Speaker of the House of Commons, according to the duty of his office, as a servant to the House, may publish such proceedings as he shall be ordered, by the Commons assembled; and he cannot be liable for what he does that way by the command of others, unless those other persons are liable.

All bills, motions, and petitions, are by order of Parliament to be entered on the Parliament rolls, although they are denied, and never proceed to the establishment of a statute, together with the answers. *Lex Constitutionis* 154.

The Speaker of the House of Commons is not allowed to persuade or dissuade in passing a bill, only to make a short narrative of it; opening the parts of the bill, so that all may understand it; if any question be upon the bill, he is to explain, but not enter into argument or dispute. When Mr. Speaker desires to speak, he ought to be heard without interruption; and when the Speaker stands up, the member standing up is to sit down: if two stand up to speak to a bill, he who would speak against the bill, if it be known, is to be first heard; otherwise he who was first up, which is to be determined by the Speaker; no member is to be taken down, unless by Mr. Speaker, in such cases as the House do not think fit to admit; and if any person speak impertinently, or besides the question, the Speaker is to interrupt him, and know the pleasure of the House whether he shall be further heard; but if he speaks not to the matter, it may be moderated: and whosoever hisses or disturbs any person in his speech, shall answer it at the bar of the House.

In enacting laws, and other proceedings in *Parliament*, the Lords give their voices in their House, from the puisne Lord *seriatim*, by the word *Content*, or *Not Content*: the manner of voting in the House of Commons, is by *Yea* and *No*; and if it be difficult to tell which are the greater number, the House divides, and four tellers are appointed by the Speaker, two of each side, to number them, the *Ayes* going out, and the *Noes* staying in; and thereof report is made to the House. When the members of the House go forth, none is to stir, until Mr. Speaker rises from his seat, and then all the rest are to follow after.

To bring a bill into the House, if the relief sought by it is of a private nature, it is first necessary to prefer a petition; which must be presented by a member, and usually sets forth the grievance desired to be remedied. This petition (when founded on facts that may be in their nature disputed) is referred to a committee of members, who examine the matter alleged, and accordingly report it to the House; and then (or otherwise, upon the mere petition) leave is given to bring in the bill. In public matters the bill is brought in upon motion made to the House, without any petition at all. Formerly, all bills were drawn in the form of petitions, which were entered upon the Parliament rolls, with the King's answer thereunto subjoined; not in any settled form of words, but as the circumstances of the case required: and at the end of each Parliament the judges drew them into the form of a statute, which was entered on the statute rolls. (See, among numberless other instances, the *articuli cleri*, 9 *Edw.* 2.) In the reign of *Henry V.* to prevent mistakes and abuses, the statutes were drawn up by the Judges before the end of the Parliament; and in the reign of *Henry VI.* bills in the form of acts, according to the modern custom, were first introduced.

It appears that, prior to the reign of *Henry V.* it had been the practice of the Kings to add and enact more than the commons petitioned for. In consequence of this, there is a very memorable petition from the Commons *an.* 2 *Hen.* 5. which states, that it is the liberty and freedom of the Commons, that there should be no statute without their assent, considering that they have ever been *assenters*, as well as *petitioners*; and therefore they pray that for the future there may be no additions to, or diminutions from, their petitions. And in answer to this the King granted, that from thenceforth they

should be bound in no instance without their assent; saving his royal prerogative to grant and deny what he pleases of their petitions. *Ruff. Pref. xv. Rot. Parl. 2 Hen. 5. No. 22.*

Any member may move for a bill to be brought in, except it be for imposing a tax, which is to be done by order of the House; and leave being granted, the person making the motion, and those who second it, are ordered to prepare and bring in the same.

Public bills or acts of Parliaments are commonly drawn, such as relate to Taxes, or other matters of Government, by the several Public Boards, according to their respective jurisdictions; others by such members of the House of Commons as are most inclined to effect the good of the public, particularly in relation to the bill designed, taking advice thereupon; and acts for the revival, repeal, or continuance of statutes, are penned by lawyers, members of the House, appointed for that purpose.

The persons directed to bring in the bill, present it in a competent time to the House, drawn out on paper, with a multitude of blanks, or void spaces, where any thing occurs that is dubious, or necessary to be settled by the Parliament itself; (such, especially, as the precise date of times, the nature and quantity of penalties, or of any sums of money to be raised:) being indeed only the skeleton of the bill. In the House of Lords, if the bill begins there, it is (when of a private nature) referred to two of the Judges; to examine and report the state of the facts alleged, to see that all necessary parties consent, and to settle all points of technical propriety. This is read a first time, and at a convenient distance a second time; and after each reading the Speaker opens to the House the substance of the bill, and puts the question whether it shall proceed any farther. The introducing of the bill may be originally opposed, as the bill itself may at either of the readings; and if the opposition succeeds, the bill must be dropped for that session; as it must also, if opposed with success in any of the subsequent stages.

After the second reading, it is committed, that is, referred to a committee; which is either selected by the House in matters of small importance, or else upon a bill of consequence, the House resolves itself into a committee of the whole House. A committee of the whole House is composed of every member; and to form it, the Speaker quits the chair, (another member being appointed chairman,) and may sit and debate as a private member. In these committees the bill is debated clause by clause, amendments made, the blanks filled up, and sometimes the bill entirely new modelled. After it has gone through the committee, the chairman reports it to the House with such amendments as the Committee have made; and then the House reconsiders the whole bill again, and the question is repeatedly put, upon every clause and amendment. When the House hath agreed or disagreed to the amendments of the committee, and sometimes added new amendments of its own, the bill is then ordered to be engrossed, or written in a strong gross hand, on one or more long rolls (or presses) of parchment, sewed together. When this is finished, it is read a third time, and amendments are sometimes then made to it; and if a new clause be added, it is done by tacking a separate piece of parchment on the bill, which is called a Rider. *Noy 84.* The Speaker then again opens the contents: and holding it up in his hands, puts the question, whether the bill shall pass. If this is

agreed to, the title to it is then settled; which used in antient times to be a general one for all the acts passed in the session: distinct titles for each chapter were not, it seems probable, introduced with much regularity before the time of *Henry VII.* After this, one of the members is directed to carry the bill to the Lords, and desire their concurrence; who, attended by several more, carries it to the bar of the House of Peers, and there delivers it to their Speaker, who comes down from his woolsack to receive it.

It there passes through the same forms as in the other House; (except engrossing, which is already done;) and, if rejected, no more notice is taken, but it passes *sub silentio*, to prevent unbecoming altercations. But if it is agreed to, the Lords send a message by two Masters in Chancery, (or upon matters of high dignity or importance, by two of the Judges,) that they have agreed to the same: and the bill remains with the Lords, if they have made no amendment to it. But if any amendments are made, such amendments are sent down with the bill to receive the concurrence of the Commons. If the Commons disagree to the amendments, a conference usually follows between members deputed from each House; these meet in the *painted chamber*, and debate the matter, and for the most part settle and adjust the difference; but, if both Houses remain inflexible, the bill is dropped. If the Commons agree to the amendments, the bill is sent back to the Lords by one of the members, with a message to acquaint them therewith. The same forms are observed, *mutatis mutandis*, when the bill begins in the House of Lords. But when an act of grace or pardon is passed, it is first signed by his Majesty, and then read once only in each of the Houses, without any new engrossing or amendment. *D'Ewe's Journ.* 20; 73: *Com. Journ.* 17 June 1747. And when both Houses have done with any bill, it is always deposited in the House of Peers to wait the royal assent; except in the case of a bill of Supply, which after receiving the concurrence of the Lords is sent back to the House of Commons. *Com. Journ.* 24 July 1660.

If any debate happens on the first reading of a bill, the Speaker puts the question whether the same shall have a second reading; and sometimes upon motion appoints a day for it; for public bills, unless upon extraordinary occasions, are seldom read more than once a day, the members being allowed convenient time to consider of them: if nothing be said against a bill, the ordinary course is to proceed without a question; but if the bill be generally disliked, a question is sometimes put, whether the bill shall be rejected? If it be rejected, it cannot be proposed any more that sessions: when a bill hath been read a second time, any member may move to have the same amended; but no member of the House is admitted to speak more than once in a debate, except the bill be read more than once that day, or the whole House is turned into a committee; and after some time spent in debates, the Speaker, collecting the sense of the House, reduces the same to a question, which he submits to the House, and is put to the vote; and a question is to be put, after the bill is so read a second time, whether it shall be committed? The Chairman of the committee makes his report of a bill at the side bar of the House, reading all the alterations made, and then delivers the same to the clerk of the Parliament; who likewise reads all the amendments, and the Speaker puts the question, whether they shall be read a second

time? And if that be agreed unto, he reads the amendments himself, and puts the question, whether the bill so amended shall be engrossed, and read a third time, some other day? In the House of Lords, if a bill be not committed, then it is to be read a third time, and the next question to be for its passing; and on the third reading of the bill, any member may speak against the whole bill to throw out the same, or for amendment of any clause. *Pract. Solic. in Par.* 397, 398.

In cases of private bills, when the petition is read, and leave given to bring in the bill, the persons concerned and affected by it may be heard by themselves or counsel at the bar, or before the committee, to whom such bill is referred; and in case of a Peer, he shall be admitted to come within the bar of the House of Commons, and sit covered on a stool whilst the same is debating. And after counsel are heard on both sides, and the House is satisfied with the contents of the bill, it goes through the several forms.

The *Royal Assent* may be given two ways: 1. In person; when the King comes to the House of Peers, in his crown and royal robes, and sending for the Commons to the bar, the titles of all the bills that have passed both Houses are read; and the King's answer is declared by the clerk of the Parliament in *Norman-French*: a badge, it must be owned, (now the only one remaining,) of conquest; and which one could wish to see fall into total oblivion, unless it be reserved as a solemn memento to remind us that our liberties are mortal, having once been destroyed by a foreign force. If the King consents to a public bill, the clerk usually declares, "*Le Roy le veut*—The King wills it so to be:" if to a private bill, "*Soit fait comme il est désiré*; Be it as it is desired." If the king refuses his assent, it is in the gentle language of "*Le Roy s'avisera*; The King will advise upon it." When a bill of Supply is passed, it is carried up and presented to the King, by the Speaker of the House of Commons; and the royal assent is thus expressed, "*Le Roy remercie ses loyal subjects, accepte leur benevolence, et aussi le veut*; The King thanks his loyal Subjects, accepts their benevolence, and wills it so to be." *Rot. Parl.* 9 *Hen. 4. in Pryn.*: 4 *Inst.* 30, 31. In case of an act of grace, which originally proceeds from the Crown, and has the royal assent in the first stage of it, the Clerk of the Parliament thus pronounces the gratitude of the Subject; "*Les prelates, seigneurs, et commons, en ce present parliament assemblés, au nom de tous vous autres subjects, remercient tres humblement votre Majesté, et srient a Dieu vous donner en santé bonne vie et longue*; The Prelates, Lords, and Commons, in this present Parliament assembled, in the name of all your other Subjects, most humbly thank your Majesty, and pray to God to grant you in health and wealth long to live." *D'Ewes's Journ.* 31.

The words *Le Roy s'avisera* correspond to the phrase formerly used by Courts of justice, when they required time to consider of their judgment; *viz. Curia advisare vult*. And there can be little doubt but, originally, these words implied a serious intent in the King to take the subject under consideration; and they only became in effect a negative, when the bill or petition was annulled by a dissolution, before the King communicated the result of his deliberation: for in the Rolls of Parliament, the King sometimes answers, that the petition is unreasonable, and cannot be granted; sometimes

he answers, that he and his Council will consider of it; as in *Rot. Parl. 37 E. 3. No. 33.*

This prerogative of rejecting bills was exercised to such an extent, in ancient times, that *D'Erves* informs us, that Queen *Elizabeth* at the close of one session gave her assent to twenty-four public, and nineteen private bills; and at the same time rejected forty-eight, which had passed the two Houses of Parliament. *Journ. 596.* The last time it was exerted was in the year 1692, by King *William III.* who at first refused his assent to the bill for triennial Parliaments; but was prevailed upon to permit it to be enacted, two years afterwards. *De Lolme 404.*

By § 3, 4. of 33 *H. 8. c. 21.* which was passed to attaint Queen *Katherine* of treason, it was enacted that the King's assent by letters patent under his great seal, signed with his hand, and notified in his absence to both Houses assembled together in the Lords' House, ever was and should be of like force, as if given by the King in person.

When the bill has received the royal assent in either of these ways, it is then, and not before, a statute or act of Parliament, and is placed among the records of the kingdom; there needing no formal promulgation to give it the force of a law, as was necessary by the civil law with regard to the Emperor's edicts: because every man in *England* is, in judgment of law, party to the making of an act of Parliament, being present thereat by his representatives. However, a copy thereof is usually printed at the King's press for the information of the whole land. And formerly, before the invention of printing, it was used to be published by the Sheriff of every county; the King's writ being sent to him at the end of every session, together with a transcript of all the acts made at that session; commanding him, "*ut statuta illa, et omnes articulos in eisdem contentos, in singulis locis ubi expedire viderit, publicè proclamari, et firmiter teneri et observari faciat.*" And the usage was to proclaim them at his County-Court, and there to keep them, that whoever would might read or take copies thereof; which custom continued till the reign of *Henry VII.* 3 *Inst. 41: 4 Inst. 26.* See further, title *Statute.*

An act of Parliament, thus made, is the exercise of the highest authority that this kingdom acknowledges upon earth. It hath power to bind every Subject in the land, and the dominions thereunto belonging; nay, even the King himself, if particularly named therein. And it cannot be altered, amended, dispensed with, suspended, or repealed, but in the same forms and by the same authority of Parliament: for it is a maxim in law, that it requires the same strength to dissolve, as to create an obligation. It is true it was formerly held, that the King might in many cases dispense with penal statutes. *Finch. L. 81, 234: Bacon. Elem. c. 19.* But now, by *stat. 1 W. & M. st. 2. c. 2.* it is declared that the suspending or dispensing with laws by regal authority, without consent of Parliament, is illegal; as has already been repeatedly noticed. See this Dictionary, title *King.*

VIII. AN Adjournment is no more than a continuance of the session from one day to another, as the word itself signifies; and this is done by the authority of each House separately every day; and sometimes for a fortnight or month together, as at *Christmas* or *Easter*, or upon other particular occasions. But the adjournment of one House is no adjournment of the other. 4 *Inst. 28.* It hath also been usual,

when his Majesty hath signified his pleasure that both or either of the Houses should adjourn themselves to a certain day, to obey the King's pleasure so signified, and to adjourn accordingly. *Com. Journ. Passim*. Otherwise, besides the indecorum of a refusal, a prorogation would assuredly follow; which would often be very inconvenient to both public and private business. For prorogation puts an end to the session: and then such bills as are only begun and not perfected must be resumed *de novo* (if at all) in a subsequent session, whereas, after an adjournment, all things continue in the same state as at the time of the adjournment made, and may be proceeded on without any fresh commencement.

A Prorogation is the continuance of the Parliament from one session to another, as an adjournment is a continuation of the session from day to day. This is done by the royal authority, expressed either by the Lord Chancellor in his Majesty's presence, or by commission from the Crown, or frequently by proclamation.

At the beginning of a new Parliament, when it is not intended that the Parliament should meet, at the return of the writ of summons, for dispatch of business, the practice is to prorogue it, by a writ of prorogation; as the Parliament called in 1790 was prorogued twice by writ; and the first Parliament in the reign of *Geo. III.* was prorogued by four writs. On the day upon which the writ of summons is returnable, the members of the House of Commons who attend, do not enter their own House, or wait for a message from the Lords, but go immediately up to the House of Lords where the Chancellor reads the writ of prorogation, and when it is intended that they should meet upon the day to which the Parliament is prorogued for dispatch of business, notice is given by a proclamation. 1 *Comm. c. 2. ft. 187. in n.* See *post*.

Both Houses are necessarily prorogued at the same time, it not being a prorogation of the House of Lords, or Commons, but of the Parliament. The session is never understood to be at an end until a prorogation: though, unless some act be passed or some judgment given in Parliament, it is in truth no session at all. 4 *Inst. 28: Hale of Parl. 38: Hut. 61.* And formerly the usage was, for the King to give the royal assent to all such bills as he approved, at the end of every session, and then to prorogue the Parliament; though sometimes only for a day or two: after which all business then depending in the Houses was to be begun again. Which custom obtained so strongly, that it once became a question, whether giving the royal assent to a single bill did not, of course, put an end to the session. And, though it was then resolved in the negative, yet the notion was so deeply rooted, that the *stat. 1 Car. 1. c. 7.* was passed to declare, that the King's assent to that and some other acts should not put an end to the session; and even so late as the reign of *Charles II.* we find a proviso frequently tacked to a bill, that his Majesty's assent thereto should not determine the session of Parliament. *Stat. 12 Car. 2. c. 1: 22 & 23 Car. 2. c. 1.* But it now seems to be allowed, that a prorogation must be expressly made, in order to determine the session.

All orders of Parliament determine by prorogation: and one taken by order of the Parliament, after their prorogation, may be discharged on an *habeas corpus*, as well as after a dissolution; but it was long since determined, that the dissolution of a Parliament did not alter the state of impeachments, brought up by the Commons in a preced-

ing Parliament. *Raym.* 120: 1 *Lev.* 384. See title *Impeachment*. Cases of appeals and writs of error shall continue, and are to be proceeded on, *in statu quo*, &c. as they stood at the dissolution of the last Parliament. *Raym.* 381.

A prorogation of Parliament is always by the King, and in this case the sessions must begin *de novo*. An adjournment is by each House, and the sessions continues notwithstanding such adjournment. 1 *Mod.* 242. By a prorogation of Parliament, there is a session; and every several session of Parliament is in law a several Parliament: though if it be only an adjournment, there is no session; and when a Parliament is called and doth sit, but is dissolved without any act passed, or judgment given, it is no Session of Parliament, but a Convention. 4 *Inst.* 27. If a Parliament is assembled, and orders made, and writs of error brought in the House of Peers, and several bills agreed on, but none signed; this is but a Convention, and no Parliament, or Session of Parliament: but every session, in which the King signs a bill, is a Parliament, and so every Parliament is a session. 1 *Rol. Refl.* 29: *Hut.* 61.

The Parliament from the first day of sitting is called the first Session of Parliament, &c. *Raym.* 120. And the Courts of justice *ex officio* are to take notice of the beginning, prorogation, and ending of every Parliament; also of all general statutes. 1 *Lev.* 296: *Hob.* 111.

On prorogation, such bills as have passed, not having received the royal assent, must fall; for there can be no act of Parliament, without consent of the Lords and Commons, and the royal *fiat* of the King, giving his consent personally, or by commission. Special acts have occasionally been passed to prevent the effect of prorogation of Parliament, in cases of Impeachment, &c. See 45 *G. 3. c.* 117 & 125.

It was held generally, that the King could not summon a Parliament before the day to which it was last prorogued; and that when a Parliament was prorogued to a certain day, they did not meet on that day, unless it were particularly declared, by the proclamation giving notice of the prorogation, that they should meet *for the dispatch of business*, and when it had not been prorogued by such a proclamation, and it was intended that Parliament should actually sit, it was the established practice to issue a proclamation, to give notice that it was for the dispatch of business; and this proclamation, unless upon some urgent occasion, bore date at least forty days before the meeting. 2 *Hats.* 239. Provisions for the meeting of Parliament within fourteen days have been from time to time made by the several Militia acts. By the existing acts, 42 *G. 3. c.* 90. for *England*; *c.* 91. for *Scotland*; in all cases of actual invasion, or imminent danger of it, and in cases of rebellion or insurrection, the King having first communicated the occasion to Parliament, if sitting, and if no Parliament be sitting, having notified the occasion by proclamation, may order the militia to be called out and embodied. And wherever this is done, if the Parliament be adjourned or prorogued, he shall convene them within fourteen days. See 42 *G. 3. c.* 90. § 111—113. 146, 147. and *c.* 91. § 109. 142.

By 37 *G. 3. c.* 127. a permanent provision was introduced, That whenever the King shall be pleased, by advice of the Privy Council, to issue a proclamation that Parliament shall meet and be holden for dispatch of business, on any day not less than fourteen days from the date of such proclamation, the same shall be sufficient notice to all persons, and the Parliament shall stand prorogued to the day and

place therein declared, notwithstanding any former prorogation, or any law or usage to the contrary. And by 39 & 40 G. 3. c. 14. this provision is extended to the case of an adjournment of Parliament, as well as a prorogation.

A Dissolution is the civil death of the Parliament; and this may be effected three ways; *First*, By the King's will, expressed either in person or by representation. For, as the King has the sole right of convening the Parliament, so also it is a branch of the royal Prerogative, that he may (whenever he pleases) prorogue the Parliament for a time, or put a final period to its existence. If nothing had a right to prorogue or dissolve a Parliament but itself, it might happen to become perpetual. And this would be extremely dangerous, if at any time it should attempt to incroach upon the Executive Power: as was fatally experienced by the unfortunate King *Charles* the First; who having unadvisedly passed an act to continue the Parliament then in being, till such time as it should please to dissolve itself, at last fell a sacrifice to that inordinate power, which he himself had consented to give them. It is therefore extremely necessary that the Crown should be empowered to regulate the duration of these assemblies, under the limitations which the *English* constitution has prescribed: so that, on the one hand, they may frequently and regularly come together, for the dispatch of business and redress of grievances; and may not, on the other, even with the consent of the Crown, be continued to an inconvenient or unconstitutional length.

A Parliament, it hath been said, ought not to be dissolved as long as any bill remains undiscussed; and proclamation must be made in the Parliament, that if any person have any petition, he shall come in and be heard, and if no answer be given, it is intended the Public are satisfied.

Secondly, A Parliament may be dissolved by the demise of the Crown. This dissolution formerly happened immediately upon the death of the reigning sovereign: for he being considered in law as the head of the Parliament, that failing, the whole body was held to be extinct. But the calling a new Parliament immediately on the inauguration of the successor being found inconvenient, and dangers being apprehended from having no Parliament in being, in case of a disputed succession, it was enacted by *stat. 7 & 8 W. 3. c. 15.* that the Parliament in being should, if sitting, continue for six months after the demise of the Crown, unless sooner dissolved, &c. by the Successor: and if not sitting, should meet on the day of prorogation; and that in case no Parliament was in being, the last preceding Parliament should convene and sit. By *stat. 6 Ann. c. 7. § 4.* it is more explicitly enacted, that Parliament shall not be determined or dissolved by demise of the Crown; but shall continue, and if sitting at the time of such demise, immediately proceed to act for six months and no longer, unless sooner prorogued or dissolved by the Successor: and if prorogued, shall meet on the day of the prorogation, and sit for the remainder of the said six months, unless sooner dissolved, &c. By § 5. it is provided, that if there be a Parliament in being at the time of the demise of the Crown, but the same happens to be then separated by adjournment or prorogation, such Parliament shall immediately after such demise meet, convene, and sit, and shall act, notwithstanding such demise, for six months, unless sooner dissolved, &c. By § 6. (repealed by 37 G. 3. c. 127.) it was provided, that in case at the time of

such demise there were no Parliament in being that had met and sate, the last preceding Parliament should immediately convene. The said act, 37 G. 3. c. 127. enacts, (§ 3.) that in case of the demise of the Crown, subsequent to the dissolution or expiration of a Parliament, and before the day appointed by the writs of summons for assembling a new Parliament, in such case the last preceding Parliament shall immediately convene and sit at *Westminster*, and be a Parliament for six months, and no longer, as if the said Parliament had not been dissolved or expired: subject to be dissolved or prorogued by the Successor. By § 4. this proviso is extended to the case of the demise of a Successor to the Crown, within six months after his succession, without his having dissolved the Parliament, or after it shall have been dissolved, and before a new one shall have met. By § 5. it is enacted, that in case of the demise of the Crown, on or after the day appointed by the writs of summons, for assembling a new Parliament, and before such new Parliament shall have actually met, such new Parliament shall immediately after such demise convene and sit at *Westminster*, and be a Parliament for six months, and no longer, subject to be dissolved, &c.

Lastly, a Parliament may be dissolved or expire by length of time. For if either the Legislative Body were perpetual; or might last for the life of the Prince who convened them, as formerly; and were so to be supplied, by occasionally filling the vacancies with new representatives; in these cases, if it were once corrupted, the evil would be past all remedy; but when different bodies succeed each other, if the people see cause to disapprove of the present, they may rectify its faults in the next. A Legislative Assembly also, which is sure to be separated again, (whereby its members will themselves become private men, and subject to the full extent of the laws which they have enacted for others,) will think themselves bound, in interest as well as duty, to make only such laws as are good. The utmost extent of time that the same Parliament was allowed to sit, by *stat. 6 W. & M. c. 2.* was three years; after the expiration of which, reckoning from the return of the first summons, the Parliament was to have no longer continuance. But by *stat. 1 Geo. 1. st. 2. c. 38.* (in order, professedly, to prevent the great and continued expenses of frequent elections, and the violent heats and animosities consequent thereupon, and for the peace and security of the government then just recovering from the late rebellion,) this term was prolonged to seven years: and, what alone is an instance of the vast authority of Parliament, the very same *House*, that was chosen for three years, enacted its own continuance for seven. So that, as our Constitution now stands, the Parliament must expire, or die a natural death, at the end of every seventh year, if not sooner dissolved by the royal prerogative, as it generally is, in the course of every five or six years.

This Septennial Act has been termed an unconstitutional exertion of the authority of Parliament; and the reason alleged is, that those who had a power delegated to them for three years only, could have no right to extend that term to seven years. But this, says Mr. *Christian*, appears to be a fallacious mode of considering the subject. Before the Triennial Act, 6 W. & M. c. 2. the duration of Parliament was only limited by the pleasure or death of the King; and it never can be supposed that the next, or any succeeding, Parliament had not the power of repealing the Triennial Act; and if that had

been done, then as before, they might have sat 17 or 70 years. It is certainly true, that the simple repeal of a former statute would have extended their continuance much beyond what was done by the Septennial Act. 1 *Comm. c. 2. ad fin. in n.* To this may be added an observation, which seems unaccountably to have been passed over in silence by the defenders (and therefore no wonder by the accusers) of the Septennial Act; namely, that it is not true in fact, as the argument is usually put, that a Parliament chosen for three years continued themselves for seven, since it was only one part of the Parliament, the *House of Commons*, which was chosen for any limited time; and the Septennial Act was the act of the *whole Legislature*.

PARLIAMENTUM DIABOLICUM, A Parliament held at *Coventry*, 38 *H. 6.* wherein *Edward Earl of March*, (afterwards King *Edw. IV.*) and many of the chief nobility were attainted, was so called; but the acts then made were annulled by the succeeding Parliament. *Holingshed's Chron.*

PARLIAMENTUM INDOCTORUM, the *Lack-learning Parliament*, A Parliament held 6 *H. 4.* whereunto by special precept to the Sheriffs in their several counties, no lawyer, or person skilled in the law, was to come. See title *Parliament VI. 2.*

PARLIAMENTUM INSANUM, A Parliament assembled at *Oxford*, anno 41 *H. 3.* so styled, from the madness of their proceedings; and because the Lords came with armed men to it, and contentions grew very high between the King, Lords, and Commons, whereby many extraordinary things were done. 4 *Inst.*

PARLIAMENTUM RELIGIOSORUM. In most convents, they had a common room into which the brethren withdrew for conversation; and the conference there had was termed *Parliamentum*. *Mat. Paris.* The abbot of *Croyland* used to call a Parliament of his monks, to consult about the affairs of his monastery: and at this day, the Societies of the two Temples, or Inns of Court, call that assembly of the Benchers or Governors, a Parliament; wherein they confer upon the common affairs of their several Houses. *Crompt. Juried. 1.*

PAROL, Word of Mouth; See titles *Agreement; Fraud; Assumpsit; Will; Trust.*

As to what things may be done by Parol without deed, the following determinations may deserve notice.

An use will not pass by Parol without deed; but *Ch. J. Pemberton* said, it would be a good trust or Chancery use, if for money. 2 *Show. 156.* A Parol release is good to discharge a debt by simple contract. *Arg. 2 Show. 417.*

A promise merely executory on both parts; as if I promise *B. 5s.* if he goes to *Paul's*, before *E.* goes, I may discharge him, and so shall discharge myself of payment of the *5s.* for no debt was yet due, nor any thing executed on either side. 3 *Lev. 238.* An agreement in writing, since the statute of frauds and perjuries, may be discharged by Parol. *Vern. 240.* A rent assigned in lieu of dower may be by Parol without deed, though it be a freehold created *de novo*: and though a rent lies in grant; because this is not properly a grant, but an appointment. 12 *Mod. 201.* Lessee for years surrendered to the lessor by Parol reserving rent; adjudged this was a good reservation upon the contract, and that an action of debt would lie for the rent af-

ter the first day of payment incurred, though the reservation was by way of contract, and without any deed. 3 *Salk.* 312. *pl.* 7.

If one has a bill of exchange, he may authorise another to indorse his name upon it, by Parol; and when that is done, it is all one as if he had done it himself. 12 *Mod.* 564. See title *Bill of Exchange*.

An insurance was made from *Archangel* to the *Downs*, and from the *Downs* to *Leghorn*, but there was a Parol agreement at the same time, that the policy should not commence till the ship came to such a place, and it was held, that the Parol agreement should avoid (or defeat) the writing; cited *per Holt Ch. J.* as adjudged in *Pemberton's* time. 2 *Salk.* 444, 445. See title *Insurance*.

If a thing is granted by a writing, which is grantable by Parol, it may be revoked by Parol. 10 *Mod.* 74.

Deputation of an office is in its own nature grantable by Parol; and therefore though it should happen to be granted by writing, yet since it is in itself grantable by Parol, it may be revoked by Parol. 10 *Mod.* 74.

PAROLS, or Pleadings, are the mutual altercations between the plaintiff and defendant; which at present are sat down and delivered into the proper office in writing, though formerly they were usually put in by their counsel *ore tenus*, or *viva voce*, in Court, and then minuted down by the chief clerks, or prothonotaries; whence in our old law *French* the pleadings are frequently denominated the Parol. 3 *Comm.* 293. See title *Pleadings*.

Parol is sometimes joined with lease, as lease Parol, *i. e.* lease *per* Parol, a lease by word of mouth, to distinguish it from a lease in writing. *Cowell*.

PAROL ARREST, Any Justice of Peace may, by word of mouth, authorize any one to arrest another who is guilty of a breach of the peace in his presence, &c. *Dalt.* 117. See title *Arrest*.

PAROL DEMURRER, Is a privilege allowed an infant, who is sued concerning lands which came to him by descent; and the Court thereupon will give judgment *quod loquela predicta remaneat, quosque* the infant comes to the age of twenty-one years. And where the age is granted on Parol Demurrer, (which may happen on the suggestion of either party, 3 *Comm.* 300.) the writ doth not abate, but the plea is put *sine die*, until the infant is of full age; and then there shall be a re-summons. 2 *Lill. Abr.* 283; 2 *Inst.* 258; *Rast. Entr.* 363.

In Parol Demurrer, when it may be had, if two are vouched, and there is Parol Demurrer for the nonage of the one; it shall be for the other also. 45 *Ed.* 3. 23. But by the statutes *Westm.* 1; 3 *Ed.* 1. c. 46. and of *Gloucester*, 6 *Ed.* 1. c. 2. in writs of entry *sur disseisin* in some particular cases, and in actions ancestrel brought by an infant, the Parol shall not demur; otherwise he might be deforced of his whole property, and even want a maintenance till he came of age. 6 *Rep.* 3, 5. So likewise in a writ of dower the heir shall not have his age; for it is necessary that the widow's claim be immediately determined, else she may want a present subsistence. 1 *Roll. Abr.* 137. Nor shall an infant patron have it in a *quare impedit*, since the law holds it necessary and expedient, that the church be immediately filled. 1 *Roll. Abr.* 138.

PAROL EVIDENCE; See *Evidence II.*

PARRICIDE, *Patricida.*] He who kills his father or mother. *Larv. Lat. Dict.* It is also used for the *crime* of killing.

By the *Roman* law, Parricide, or the murder of one's parents or children, was punished in a much severer manner than any other kind of homicide. After being scourged, the delinquents were sewed up in a leather sack, with a live dog, a cock, a viper, and an ape, and so cast into the sea. *Solon*, it is true, in his laws, made none against Parricide; apprehending it impossible that any one should be guilty of so unnatural a barbarity. And the *Persians*, according to *Herodotus*, entertained the same notion, when they adjudged all persons who killed their reputed parents to be bastards. And, upon some such reason as this, must we account for the omission of an exemplary punishment for this crime in our *English* laws; which treat it no otherwise than as simple murder; unless the child was also the servant of his parent. 1 *Hal. P. C.* 380.

For though the breach of natural relation is unobserved, yet the breach of civil or ecclesiastical connections, when coupled with murder, denominates it a new offence; no less than a species of treason, called *parva proditio*, or petit treason; which, however, is nothing else but an aggravated degree of murder; although, on account of the violation of private allegiance, it is stigmatized as an inferior species of treason. And thus, in the antient *Gothic* constitution, we find the breach both of natural and civil relations, ranked in the same class with crimes against the State and Sovereign. 4 *Comm.* 202, 3. See title *Treason*.

PARSON.

PERSONA ECCLESIE.] One that hath full possession of all the rights of a parochial church. He is called Parson, *Persona*, because, by his person the Church, which is an invisible body, is represented; and he is in himself a body corporate, in order to protect and defend the rights of the Church (which he personates) by a perpetual succession. 1 *Inst.* 300. It has been also said, that he is called *Parson*, as he is bound, by virtue of his office, *in propria personâ servire Deum*. *Fleta, l. 9. c. 18.* He is sometimes called the *Rector* or Governor of the Church; but the appellation of *Parson* is the most legal, as well as the most beneficial and honourable, title that a parish priest can enjoy; because such an one, (as *Coke* observes,) and he only, is said *vicem seu personam ecclesie gerere*. 1 *Comm. c. 11. ff.* 384.

The word *Parson*, in a large sense, includes all clergymen having spiritual presentments. And there may be two Parsons in one church; one of the one moiety, and the other of the other; and a part of the church and town allotted to each: and there may be two, that make but one Parson in a church, presented by one patron. 1 *Inst.* 17, 18.

A Parson hath the entire fee of his church; and where it is said he hath not the right of fee-simple, that is understood as to bringing a temporal writ of right. *Cro. Car.* 582. And in the time of the Parson, the patron hath nothing to do with the church; but if the Parson wastes the inheritance thereof to his own private use, in cutting trees, &c. his patron may have a prohibition, so that, to some purposes, he hath an interest during the Parson's time. 11 *H. 6. 4: 11 Rep.* 49.

- I. *The Distinction between a Parson (or Rector); and a Vicar.*
- II. *The Method of becoming a Parson or Vicar; and of their Qualifications and Duties.*
- III. *How one may cease to be a Parson or Vicar.*

I. THOUGH a Parson has regularly during his life the freehold in himself of the parsonage house, the glebe, the tithes, and other dues: yet these are sometimes *appropriated*; that is to say, the benefice is perpetually annexed to some spiritual corporation, either sole or aggregate, being the patron of the living; which the law esteems equally capable of providing for the service of the church, as any single private clergyman. See this Dictionary, title *Appropriation*.

The antient appropriating Corporations, or Religious Houses, were wont to depute one of their own body to perform divine service, and administer the sacraments in those parishes, of which the Society thus became the Parson. This officiating minister was in reality no more than a curate, deputy, or vicegerent of the appropriator, and therefore called *Vicarius* or Vicar. His stipend was at the discretion of the Appropriator; who was however bound of common right to find somebody, *qui illi de temporalibus, episcopo de spiritualibus, debeat respondere. Seld. Tith. c. 11. 1.* But this was done in so scandalous a manner, and the parishes suffered so much by the neglect of the Appropriators, that the Legislature was forced to interpose: and, accordingly, it is enacted by *stat. 15 R. 2. c. 6.* that in all appropriations of churches, the diocesan bishop shall ordain (in proportion to the value of the church) a competent sum to be distributed among the poor parishioners annually; and that the vicarage shall be sufficiently endowed. It seems the parish were frequently sufferers, not only by the want of divine service, but also by withholding those alms, for which, among other purposes, the payment of tithes was originally imposed: and therefore, in this act, a pension is directed to be distributed among the poor parochians, as well as a sufficient stipend to the Vicar. But he, being liable to be removed at the pleasure of the Appropriator, was not likely to insist too rigidly on the legal sufficiency of the stipend; and therefore, by *stat. 4 Hen. 4. c. 12.* it is ordained, that the Vicar shall be a secular person, not a member of any religious house; that he shall be Vicar perpetual, not removeable at the caprice of the monastery; and that he shall be canonically instituted and inducted, and be sufficiently endowed, at the discretion of the Ordinary, for these three express purposes: to do divine service; to inform the people; and to keep hospitality.

From this statute we may date the origin of the present Vicarages; for, before this time, the Vicar was nothing more than a temporary curate; and when the church was appropriated to a monastery, he was generally one of their own body; that is, one of the *regular* clergy; for the monks, who lived *secundum regulas* of their respective houses or societies, were denominated regular clergy, in contradiction to the parochial clergy, who performed their ministry in the world, *in seculo*; and who, from thence, were called *secular* clergy. All the tithes or dues of the church of common right belong to the Rector; or to the Appropriator or Impropiator, who have the same rights as the Rector; and the Vicar is entitled only to that portion which is expressed in his endowment; or what his predecessors have

immemorially enjoyed by prescription, which is equivalent to a grant or endowment. These endowments frequently invest the Vicar with some part of the great tithes; therefore the words *rectorial* and *vicarial* tithes have no definite signification: but *great* and *small* tithes are technical terms; and which are, or ought to be, accurately defined and distinguished by the law. 1 *Comm. c. 11. in n.* See this Dict. title *Tithes*.

The endowments, in consequence of these statutes, have usually been by a portion of the glebe, or land, belonging to the Parsonage, and a particular share of the tithes, which the Appropriators found it most troublesome to collect, and which are therefore generally called *privy* or *small* tithes; the greater, or *predial*, tithes being still reserved to their own use. But one and the same rule was not observed in the endowment of all vicarages. Hence some are more liberally, and some more scantily, endowed: and hence the tithes of many things, as wood in particular, are in some parishes *rectorial*, and in some *vicarial*, tithes. 1 *Comm. c. 11.*

The distinction therefore of a Parson and Vicar is this: The Parson has for the most part the whole right to all the ecclesiastical dues in his parish; but a vicar has generally an appropriator over him, entitled to the best part of the profits, to whom he is in effect perpetual curate, with a standing salary. Though in some places the vicarage has been considerably augmented by a large share of the great tithes; which augmentations were greatly assisted by *stat. 29 Car. 2. c. 8.* enacted in favour of poor Vicars and Curates; which rendered such temporary augmentations (when made by the appropriators) perpetual.

A vicar indeed must *necessarily* have an appropriator over him, or a sinecure Rector, who in some books is considered as, and called, an Appropriator. Of benefices, some have never been appropriated; consequently, in those there can be no Vicar, and the incumbent is Rector, and entitled to all the dues of the church. Some were appropriated to secular ecclesiastical corporations, which appropriations still exist, except perhaps some few which may have been dissolved; others were appropriated to the Houses of the regular clergy; all which appropriations, at the dissolution of monasteries, were transferred to the Crown; and, in the hands of the King or his grantees, are now called *Impropriations*; but in some appropriated churches no perpetual Vicar has ever been endowed; in that case, the officiating minister is appointed by the Appropriator or Impropiator, and is called a perpetual Curate. 1 *Comm. c. 11. in n.* See further titles *Vicar; Vicarage*.

II. THE method of becoming a Parson or Vicar is much the same. To both there are four requisites necessary: holy orders; presentation; institution; and induction. The method of conferring the holy orders of deacon and priest, according to the liturgy and canons, is foreign to the present purpose, any farther than as they are necessary requisites to make a complete Parson or Vicar. See 2 *Burn. Eccl. Law*, 103. By common Law, a Deacon, of any age, might be instituted and inducted to a parsonage or vicarage; but it was ordained by *stat. 13 Eliz. c. 12.* that no person under 23 years of age, and in deacon's orders, should be presented to any benefice with cure; and if he were not ordained Priest within one year after his induction, he

should be *ipso facto* deprived: and now, by *stat. 13. & 14. Car. 2. c. 4.* no person is capable to be admitted to any benefice, unless he hath been first ordained a priest; and then he is, in the language of the law, *A Clerk in orders.* But if he obtains orders, or a licence to preach, by money or corrupt practices, (which seems to be the true, though not the common notion of simony,) the person giving such orders forfeits 40*l.* and the person receiving 10*l.* and is incapable of any ecclesiastical preferment for seven years afterwards. *Stat. 31 Eliz. c. 6:* and see further this Dictionary, title *Ordination.*

Any Clerk may be presented to a parsonage or vicarage; that is, the patron, to whom the advowson of the church belongs, may offer his Clerk to the Bishop of the diocese to be instituted. A layman also may be presented; but he must take Priest's orders before his admission. 1 *Burn. Eccl. Law*, 103. As to Advowsons, or the right of presentation, which are a species of private property, see this Dictionary, title *Advowson.*

But when a clerk is presented, the Bishop may refuse him upon many accounts. As, if the patron is excommunicated, and remains in contempt forty days. 2 *Roll. Abr.* 355. Or if the clerk be unfit: *Glanv. l. 13. c. 20;* which unfitness is of several kinds. First, with regard to his person; as if he be a bastard; (though that incapacity seems now exploded, see *Bastard;*) an outlaw, an excommunicate, an alien, under age, or the like. 2 *Roll. Abr.* 356: 2 *Inst.* 632: *Stats. 3 Ric. 2. c. 3:* 7 *Ric. 2. c. 12.* Next, with regard to his faith or morals; as for any particular heresy, or vice that is *malum in se:* but if the Bishop alleges only in generals, as that he is *schismaticus inveteratus,* or objects a fault that is *malum prohibitum,* merely as haunting taverns, playing at unlawful games, or the like; it is not good cause of refusal. 5 *Rep.* 58. Or, lastly, the clerk may be unfit to discharge the pastoral office, for want of learning. In any of which cases the Bishop may refuse the clerk. In case the refusal is for heresy, schism, inability of learning, or other matter of ecclesiastical cognizance, there the Bishop must give notice to the patron of such his cause of refusal, who, being usually a layman, is not supposed to have knowledge of it; else he cannot present by lapse: but, if the cause be temporal, there he is not bound to give notice. 2 *Inst.* 632. See title *Advowson* II.

If an action at law be brought by the Patron against the Bishop for refusing his clerk, the Bishop must assign the cause. If the cause be of a temporal nature and the fact admitted, (as, for instance, outlawry,) the judges of the King's Courts must determine its validity, or whether it be sufficient cause of refusal; but if the fact be denied, it must be determined by a jury. If the cause be of a spiritual nature, (as, heresy, particularly alleged,) the fact, if denied, shall also be determined by a jury; and if the fact be admitted or found, the Court, upon consultation, and advice of learned divines, shall decide its sufficiency. 2 *Inst.* 632. If the cause be want of learning, the Bishop need not specify in what points the clerk is deficient, but only allege, that he is deficient; for the *stat. 9 Edw. 2. st. 1. c. 13,* is express, that the examination of the fitness of a person presented to a benefice belongs to the ecclesiastical judge. 5 *Rep.* 58: 3 *Lev.* 313. But because it would be nugatory in this case to demand the reason of refusal from the Ordinary, if the patron were bound to abide by his determination, who has already pronounced his clerk unfit; therefore,

if the Bishop returns the clerk to be *minus sufficiens in literaturâ*, the Court shall write to the Metropolitan, to re-examine him, and certify his qualifications; which certificate of the Archbishop is final. 2 *Inst.* 632.

If the Bishop hath no objections, but admits the patron's presentation, the clerk so admitted is next to be instituted by him; which is a kind of investiture of the spiritual part of the benefice; for by institution the care of the souls of the parish is committed to the charge of the clerk. When a vicar is instituted, he (besides the usual forms) takes, if required by the Bishop, an oath of perpetual residence; for the maxim of law is, that *vicarius non habet vicarium*: and, as the non-residence of the Appropriators was the cause of the perpetual establishment of vicarages, the law judges it very improper for them to defeat the end of their constitution, and by absence to create the very mischief which they were appointed to remedy; especially as, if any profits are to arise from putting in a curate and living at a distance from the parish, the Appropriator, who is the real Parson, has undoubtedly the elder title to them. And it appears that the Bishop cannot dispense with the Vicar's oath, which is, that he will be resident upon his vicarage, unless dispensed withal by his diocesan. 1 *Burn. Eccl. Law*, 148.

When the Ordinary is also the patron, and confers the living, the presentation and institution are one and the same act, and are called a Collation to a benefice. See title *Advowson* I. By institution or collation the church is full, so that there can be no fresh presentation till another vacancy, at least in the case of a common patron; but the church is not full against the King, till induction: nay, even if a clerk is instituted upon the King's presentation, the Crown may revoke it before induction, and present another clerk. *Co. Litt.* 344. Upon institution also the clerk may enter on the parsonage house and glebe, and take the tithes; but he cannot grant or let them, or bring an action for them, till induction. 1 *Comm. c.* 11. *p.* 391. See further this Dictionary, title *Institution*.

Induction is performed by a mandate from the Bishop to the Archdeacon, who usually issues out a precept to other clergymen to perform it for him. It is done by giving the clerk corporal possession of the church, as by holding the ring of the door, tolling a bell, or the like; and is a form required by law, with intent to give all the parishioners due notice, and sufficient certainty of their new minister, to whom their tithes are to be paid. This therefore is the investiture of the temporal part of the benefice, as institution is of the spiritual. See further title *Induction*. And when a clerk is thus presented, instituted, and inducted into a rectory, he is then, and not before, in full and complete possession, and is called in law *persona impersonata*, or Parson impersonæ. *Co. Litt.* 300.

The *Duties* of a Parson or Vicar are principally of ecclesiastical cognizance; see this Dictionary, title *Preaching*; those only excepted which are laid upon him by statute. And those are indeed so numerous, that it is impracticable to recite them here with any tolerable conciseness or accuracy; they are to be gathered chiefly from such authors as have compiled treatises expressly upon this subject; though these, it is remarked by *Blackstone*, are not very much to be relied on. The article of *Residence* is now regulated in *England* by the *stat.* 43 *Geo.* 3. *c.* 84. and in *Ireland* by *stat.* 43 *Geo.*

3. c. 66. Legal residence is not only in the parish, but also in the parsonage house, if there be one: for it hath been resolved, that the statute intended residence, not only for serving the cure, and for hospitality; but also for maintaining the house, that the successor also may keep hospitality there. 6 *Reft.* 21. And if there be no parsonage house, it hath been holden that the incumbent is bound to hire one, in the same parish, to answer the purposes of residence. See *Cowp.* 429: 5 *Burr.* 2722 and this Dictionary, title *Residence*.

For the more effectual promotion of this important duty of residence in the parochial clergy in *England*, a provision is made by the *stat.* 17 *Geo.* 3. c. 53. for raising money upon ecclesiastical benefices, and to be expended in rebuilding, or repairing, the houses belonging to such benefices.

This statute enables the Incumbent, when there is no parsonage house, or where it is so ruinous as not to be repaired with one year's income of the living, on a certificate of a Surveyor on Oath, before a justice, of the state of the buildings on the glebe, and of timber fit for repair, which, with an account on Oath of the annual value of the living, is to be laid before the Patron and Ordinary, to borrow of any person, with the consent of the Patron and Ordinary, upon mortgage for 25 years of the revenue of the living, a sum not exceeding two years' clear value, to be laid out in repairs, building, or the purchase of a house. Such mortgage deed shall be registered with the registrar of the diocese. Mortgagee may recover his interest by distress and sale, or the Ordinary may sequester the profits of the Living. The money so borrowed shall be paid into the hands of a person appointed by the Ordinary, Patron, and Incumbent, who is to contract and pay for repairs. The annual payments may be apportioned between deceased Incumbent, and his successor by arbitration. The interest of the money so borrowed is to be repaid by the Incumbent yearly, and *5l. per cent.* upon the principal remaining due, or *10l. per cent.* if he does not reside 20 weeks within a year. And where the income is *100l.* a year, and the Incumbent does not reside 20 weeks within a year, the Patron and the Ordinary are empowered to borrow and apply money without his consent. Ordinary, Patron, and Incumbent may purchase a house (within one mile of the church) and land either under this act, or by exchange of part of the glebe. The Governors of Queen *Anne's* bounty may lend money upon such mortgages at *4l. per cent.* interest, and *100l.* upon a living under *50l.* a year, without any interest. Colleges and other Corporations may lend money for this purpose upon their own livings without interest. Where the Crown is Patron, the consent of the Treasury, &c. is requisite. Lords of manors, &c. empowered to grant wastes for building such houses. The statute contains the forms and modes of proceeding to fulfil its various purposes.

As under this statute the money borrowed was directed to be discharged by paying *5l. per cent.* yearly, upon the principal *remaining due*; it was directed by 21 *Geo.* 3. c. 66. such instalments should be calculated on the original sum advanced, so that it should be paid, at the farthest, within 20 years.

By 43 *G.* 3. c. 107. the Governors of Queen *Anne's* bounty are empowered to build parsonage houses on livings augmented by that fund: and by 43 *G.* 3. c. 108. persons possessed in their own right, by deed enrolled, or by will executed, three months before their de-

cease, give lands not exceeding five acres, or personal property not exceeding 500*l.* for building parsonages (or churches,) &c.

Various acts have been passed for the effectuating of the like beneficent purposes in *Ireland*, viz. 43 G. 3. c. 106: 46 G. 3. c. 60: 48 G. 3. c. 65. See title *First Fruits*.

III. ALTHOUGH there is but one way, whereby one may become a Parson or Vicar; there are many circumstances, besides death, by which one may cease to be so.

By *Cession*, in taking another benefice. For by *stat.* 21 *Hen.* 8. c. 13. if any one having benefice of 8*l.* *per ann.* or upwards, (according to the present valuation in the King's books, *Cro. Car.* 456.) accepts any other, the first shall be adjudged void, unless he obtains a dispensation; which no one is entitled to have, but the chaplains of the King and others therein mentioned; the brethren and sons of Lords and Knights; (but not of baronets, as that dignity did not exist at the time of the *stat.* 21 *H.* 8.) and doctors and bachelors of divinity and law, admitted by the universities of this realm. See this Dictionary, titles *Chaplain*; *Plurality*. And a vacancy thus made, for want of a dispensation, is called *Cession*. See this Dictionary, title *Cession*.

By *Consecration*; for when a Clerk is promoted to a bishopric, all his other preferments are void, the instant that he is consecrated. See this Dictionary, title *Bishops*. But there is a method, by the favour of the Crown, of holding such livings in *commendam*. *Commenda*, or *ecclesia commendata*, is a living commended by the Crown to the care of a clerk, to hold till a proper pastor is provided for it. This may be temporary for one, two, or three years; or perpetual; being a kind of dispensation to avoid the vacancy of the living, and is called a *commenda retinere*. There is also a *commenda recipere*, which is to take a benefice *de novo*, in the Bishop's own gift, or the gift of some other patron consenting to the same; and this is the same to him as institution and induction are to another clerk. See further this Dictionary, title *Commendam*.

By *Resignation*. But this is of no avail, till accepted by the Ordinary; into whose hands the resignation must be made. *Cro. Jac.* 198. See further this Dictionary, title *Resignation*.

By *Deprivation*; either, first, by sentence declaratory in the Ecclesiastical Courts, for fit and sufficient causes allowed by the Common Law; such as attainder of treason or felony, *Dyer* 108: *Jenk.* 210; or conviction of other infamous crime in the King's Courts; for heresy, infidelity, (*Fitz. Ab. tit. Trial* 54.) gross immorality, and the like; or, secondly, in pursuance of divers penal statutes, which declare the benefice void, for some non-feasance or neglect, or else some malfeasance or crime. As, for Simony; by *stats.* 31 *Eliz.* c. 6: 12 *Ann. st.* 2. c. 12; see title *Simony*;—for maintaining any doctrine in derogation of the King's supremacy, or of the thirty-nine articles, or of the Book of Common Prayer; by *stats.* 1 *Eliz.* cc. 1, 2: 13 *Eliz.* c. 12:—for neglecting, after institution, to read the liturgy and articles in the church, or make the declarations against popery, or take the abjuration oath; *stats.* 13 *Eliz.* c. 12: 13 & 14 *C.* 2. c. 4: 1 *Geo.* 1. *st.* 2. c. 6:—for using any other form of prayer than the liturgy of the church of *England*; *stat.* 1 *Eliz.* c. 2:—or for absenting himself sixty days in one year from a benefice belonging to a popish patron, to which the clerk was presented by either of the universities; *stat.* 1 *W. & M. st.*

1. c. 26; see title *Papist*: in all which and similar cases the benefice is *ipso facto* void, without any formal sentence of deprivation. 6 *Rep.* 29, 30: 1 *Comm. c.* 11.

For further matter relating to this subject, see this Dict. titles *Church*; *Clergy*; *Curate*; *Quare Impedit*; *Tithes*, &c.

PARSONAGE, *Personatus*, *Personagium*.] Is sometimes taken for a dignitary in a church, and sometimes for the benefice itself. *Cowell*.

Parsonage, or rectory, is a parish church, endowed with a house, glebe, tithes, &c.; or a certain portion of lands, tithes, and offerings, established by law, for the maintenance of the minister who hath the cure of souls, and though properly a Parsonage or rectory doth consist of glebe land and tithes; yet it may be a rectory, though it have no glebe, but the church and churchyard: also there may be neither glebe nor tithes, but annual payments in lieu thereof. *Pars. Counc.* 190. The rights to the Parsonage and church lands are of several natures; for the Parson hath a right to the possession; the Patron hath the right of presentation; and the Ordinary a right of investiture, &c. But the rights of the Patron and Ordinary are only collateral rights; neither of them being capable of possessing or retaining the church themselves; though no charge can be laid on the church or Parsonage, but by the consent and agreement of all of them. *Hughes's Pars. Law*, 188. See titles *Parson*; *Appropriation*.

PARSON MORTAL. The rector of a church instituted and inducted, for his own life, was called *Persona Mortalis*: and any collegiate or conventional body, to whom the church was for ever appropriated, was termed *Persona immortalis*. *Cartular. Rading. MS. f.* 182. See titles *Parson*; *Appropriation*.

PARTES FINIS NIHIL HABUERUNT, &c. Is an exception taken against a fine levied. 3 *Rep.* 88. See title *Fine of Lands*.

PARTICIPATIO, Is the charity so called, by which the poor are made *participes* of other men's goods. We read it in several places in the *Monast.* 2 tom. page 321.

PARTIES, Are those who are named in a deed or fine, as parties to it; as those who levy the fine, and to whom the fine is levied: so they who make any deed, and they to whom it is made, are called *Parties to the Deed*. *Cowell*. See titles *Deeds*; *Fine of Lands*.

PARTITION, *Partitio*.] The dividing land descended by the Common Law, or custom, among co-heirs or parceners, where there are two at least. In *Kent*, where the land is of gavelkind nature, they call their Partition shifting, from the Saxon *shifian*, to divide. In *Latin* it is called *hercissere*. Partition also may be made by joint-tenants, or tenants in common, by assent, deed, or writ. See titles *Joint-tenants*; *Parceners*; *Tenants in Common*.

PARTITIONE FACIENDA, mentioned in *stat. 31 H. 8. c. 1*.] A writ that lies for those who hold lands or tenements *pro indiviso*, and would sever to every one his part; against those who refuse to join in Partition, as coparceners, tenants in gavelkind, &c. *Old Nat. Brev.* 142: *F. N. B.* 61. See title *Parceners*; *Joint-tenants*; *Tenants in Common*.

PARTNERS, Are where two or more persons agree to come into any trade or bargain in certain proportions agreed upon. See title *Bankrupt*, IV. 7.

PART-OWNERS, Those who are concerned in ship matters, and have joint shares therein. See title *Insurance*.

PARTY-WALLS; See titles *Fire*; *London*.

PARVISE, *Seldon* (in his Notes on *Fortescue*, c. 51.) defines it to be, an afternoon's exercise, or moot for the instruction of young students; bearing the same name originally with the *Parvisie* at *Oxford*. *Seld. Notes*, page 56. *Chaucer* mentions it in one of his prologues.

PASCHA CLAUSUM, The octaves of *Easter* or *Low Sunday*, which closes that solemnity: and *die (tali) post Pascha Clausum*, is a date in some of our old deeds. The first statute of *Westminster*, anno 3 *Ed. 1.* is said to be made the *Monday* after *Easter* week; *Condemain de la cluse de Pasche*, &c.

PASCHA FLORIDUM, The *Sunday* before *Easter*, called *Palm Sunday*; when the proper hymn or gospel sung was *occurent turbe cum floribus & palmis*, &c. *Cartular. Abbat. Glaston. MS. 75.*

PASCHAL RENTS, Rents or yearly tributes paid by the clergy to the Bishop or Archdeacon, at their *Easter* visitations.

PASCUA, A particular meadow or pasture ground, set apart to feed cattle. See *Lindwood. Prov. Ang. l. 3. c. 18*: and *post, pastura*.

PASCUAGE, *pascuagium*, Fr. *pascege*.] The grazing or pasturing of cattle. *Mon. Angl. ii. 23.* The same with *pannage*.

PASNAGE, And *pathnage* in woods, &c. See title *Pannage*.

PASSAGE, *passagium*.] Is properly over water, as *way* is over land; it relates to the sea, and great rivers, and is a *French* word signifying *transitum*.

Passagio is also the name of a writ directed to the keepers of the ports to permit a man to pass over sea, who has the King's leave. *Reg. Orig. 193.* The prices of passage at *Dover*, &c. were limited by *stat. 4 Ed. 3. c. 8.* repealed 21 *Jac. 1. c. 28. § 11.* None to pass out of the realm without the King's licence, *stat. 5 R. 2. st. 1. c. 2.* repealed 4 *Jac. 1. c. 1. § 22.* See titles *King*; *Ne exeat regno*. Passage from *Kent* to *Calais* restrained to *Dover*. *Stat. 4 Ed. 4. c. 10.* repealed by 21 *Jac. 1. c. 28. § 11.*

PASSAGIUM, Or *Passagium Regis*, A voyage or expedition to the Holy Land, when made by the Kings of *England* in person. *Cowell*.

PASSATOR, He who has the interest or command of the passage of a river, or the Lord to whom a duty is paid for passage. *Cowell*.

PASSIAGIARIUS, A ferry-man. *Thorn's Chronicle*, in an. 1287.

PASS-PORT, A compound of two *French* words, *viz. passer*, *transire*, and *port*, *portus*, a haven. It signifies a licence, for the safe passage of any man from one place to another. See *stat. 2 E. 6. c. 2*; and titles *Alien IV*; *Safeconducts*.

PASTITIUM, A pasture field. *Domesday*, per *Gale* 761.

PASTORAL STAFF. The form of it was straight, which signified *rectum regimen*. All the top part of it was crooked, and the other part sharp: the crooked signified, that the bishop presided over the people; and the sharp signified, to punish the stubborn. *Cowell*.

PASTURE, Is any place generally where cattle may feed; and feeding for cattle is called *Pasture*, wherefore feeding grounds are called common of *Pasture*: but common of pasture is properly a right of putting beasts to pasture in another man's soil; and in this there is an interest of the lord and of the tenant. *Wood's Inst. 196, 197.*

For in those waste grounds, which are usually called *Commons*, the property of the soil is generally in the lord of the manor; as in common fields it is in the particular tenants. And common of Pasture is either appendant, appurtenant, because of vicinage, or in gross. See title *Common*.

PASTUS, The procuration, or provision, which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands: This, in many places, was turned into money. *Hoc modo per ævum liberabo à Pastu Regis & Principum. Chart. Walgasi Regis Merciorum in Mon. Angl. i. 123.*

PATENTEE, One to whom the King grants his letters patent. 7 *Ed. 6. c. 3.*

PATENTS, The King's writings, sealed with the Great Seal, having their name from being *open*: and they differ from writs. *Crompt. Jurisd. 126.* The king is to advise with his Council touching grants and Patents made of his estate, &c. And in petitions for lands, annuities, or offices, the value is to be expressed; also a former Patent is to be mentioned where the petition is for a grant in reversion, or the Patents thereupon shall be void. *Stats. 1 Hen. 4. c. 6: 6 Hen. 8. c. 15.* Patents which bear not the date and day of delivery of the King's warrants into Chancery, are not good. *Stat. 18 Hen. 6. c. 1.*—Where the King's Patent creates a new estate, of which the law doth not take knowledge; the Patents are void. 8 *Rept. 1: 5 Rept. 93.* But Patents shall not be avoided by nice constructions: if a Patent may be taken to two intents, and is good as to one, and not as to the other, it is valid. *Jenk. Cent. 138.* When the King would pass a freehold, it is necessary that the Patent be under the Great Seal; and it ought to be granted *de advisamento* of the Chancellor of the Exchequer and Lord Treasurer in the usual manner. *Fitzgib. 291.* See titles *Grants of the King; Scire Facias.*

As to Patents for new inventions, see title *Monopoly*. For Patents of peerage, title *Peer*. For Patent of precedence, title *Barrister*.

PATRIA, The country; the men of a neighbourhood: Thus when it is said *inquiratur per patriam*, a jury of the neighbourhood is meant. In like manner, *Assisa vel recognitio per assisam, idem est quod recognitio Patriæ.* *Cowell.* See titles *Jury; Assise.*

PATRIMONY, An hereditary estate, or right descended from ancestors. The legal endowment of a Church, or Religious House, was called *ecclesiastical Patrimony*; and the lands and reversions, united to the See of Rome, are called *St. Peter's Patrimony.* *Cowell.*

PATRINUS, A godfather; as *Matrina* is a god-mother. *Ll. H. 1.*

PATRITIUS, An honour conferred on men of the first quality, in the time of the *English Saxon Kings.* *Mon. Ang. i. 13.*

PATRON, He who hath the disposition of an ecclesiastical benefice. See titles *Advowson; Parson.*

The Patron's rights is the most worthy and first act and part of a promotion to a benefice, and is granted and pleaded by the name of *libera dispositio ecclesiæ.* *Hob. 152.* But during the vacancy of a church, the freehold of the glebe is not in the Patron; for it is in abeyance. 8 *H. 6. 24: Litt. 144.* A Patron shall not have an action for trespass done when the Church is vacant: and if a man who hath a right to glebe lands, releaseth the same to the Patron, that is not good; because the Patron has not any estate in the land. 11 *H. 6. 4.* If the Patron grants

a rent out of a church, it is void even against himself. 38 *Ed.* 3, 4. See further, this Dict. titles *Advowson; Parson; Vicar, &c.*

PAVAGE, *Pavagium.*] Money paid towards paving the streets or highways. *Rex concessit Pavagium ville de Huntingdon per quinquennium. Pla. Parl.* 35 *Edw.* 1.

PAVING. See *London, Scavengers, Police.*

PAUPER, A poor man; according to which we have a term in law, to sue *in formâ pauperis.*

Before a person is admitted to sue *in formâ pauperis*, he must have counsel's hand to his petition, certifying the judge to whom the petition is directed, that he conceives the petitioner hath good cause of action; he must also annex an affidavit to his petition, that he is not worth five pounds, all his debts paid, except wearing apparel, and his right to the matter in question. *Lil. Reg.* 633.

None ought to be admitted to sue *in formâ pauperis* in an action on the case, for words. *Lil. Reg.* 633.

A person admitted to sue *in formâ pauperis*, can only sue in that cause for which he is admitted, & *sic toties quoties.* *Lil. Reg.* 633.

It seems that, after the statutes which introduced costs, neither plaintiffs nor defendants could sue or defend *in formâ pauperis*; for that would be a means of depriving the other party of the costs given him by statute: and as *stat.* 11 *Hen.* 7. *c.* 12. enables persons only to sue as Paupers; and as the *stat.* 23 *Hen.* 8. *c.* 15. excepts only plaintiffs who are Paupers from paying costs; it seems, that one cannot be admitted in a civil action to defend as a Pauper. But it hath been adjudged, that a person may be admitted to defend an indictment *in formâ pauperis* for a misdemeanor, such as a conspiracy, keeping a disorderly house, &c. for in such proceedings there being no costs, the judges have a discretionary power of admitting or refusing them by the Common Law. *Pasch.* 9 *Geo.* 2. *The King v. Wright.* See *stat.* 2 *Geo.* 2. *c.* 28. § 8, by which persons are allowed to defend *in formâ pauperis* on actions and informations relating to the Customs.

It is said, that Paupers ought not to be admitted to remove causes out of inferior Courts, but ought to satisfy themselves with the jurisdiction within which their actions properly lie. 1 *Mod.* 368.

By the orders of the Courts, if the party admitted to sue *in formâ pauperis* give any fee or reward to his counsel or attorney, or make any contract, or agreement with them, he shall from thenceforth be dispaupered, and not be afterwards admitted again in that suit to prosecute *in formâ pauperis.* *Ord. Cur.* 94.

Also, if it shall be made appear to the Court, that any person prosecuting *in formâ pauperis* hath sold or contracted for the benefit of the suit, or any part thereof, while the same depends, such cause shall be from thenceforth totally dismissed the Court. *Ord. Cur.* 95.

It is said, that if a Pauper gives notice of trial, and does not proceed, he shall be dispaupered. 1 *Salk.* 506. See further title *Costs* II.

PAWN, *Pignus.*] A pledge or gage for payment of money lent: it is said (*risum teneatis?*) to be derived à pugno, *quia res quæ pignori dantur, pugno vel manu traduntur.* *Lit. Dict.* The party who pawns goods, hath a general property in them; they cannot be forfeited by the Pawnee, or party who hath them in Pawn, for any offence of his; nor be taken in execution for his debt; neither may they otherwise be put in execution, till the debt for which they are pawned is satisfied. *Litt. Rep.* 332. For the absolute property is in another: therefore they

are not alienable, nor, by consequence, forfeitable; because they cannot be forfeited without loss and danger to the absolute owner; and all qualified possessors do take the property under the restriction to preserve the property of the right owner. *Bro.* title *Attachment in Assise* 20.

If a man pawns goods for money, and afterwards a judgment is had against the Pawner at the suit of one of the creditors; the goods in the hands of the Pawnee shall not be taken in execution, until the money is paid to the Pawnee: because he had a qualified property in them, and the judgment creditor only an interest. 3 *Bulst.* 17. And when a person hath jewels in Pawn for a certain sum, and he who pawned them is attainted, the King shall not have the jewels unless he pay the money. *Plowd.* 487. For the alteration of the general property doth not alter the special property in the Pawnee. 2 *H.* 7. 1: 1 *Bulst.* 29.

If a man pledge goods and then is outlawed, he cannot redeem them; because *then* the absolute property is in the King; but if the outlawry is reversed, then the person is reinstated in his property, as if there had been no outlawry; and therefore may redeem them. 1 *Bulst.* 29.

The Pawnee of goods hath a special property in them, to detain them for his security, &c. and he may assign the Pawn over to another, subject to the same conditions: and if the Pawnee die before redeemed, his executors shall have it upon the like terms as he had it.

If goods pawned are perishable, and no day being set for payment of the money, they lie in Pawn till spoiled, without any default in him who hath them in keeping; the party who pawned them shall bear the damage; for it shall be adjudged his fault that he did not redeem them sooner: and he, to whom pawned, may have action of debt for his money. Also, if the goods are taken from him, he may have action of trespass, &c. *Co. Litt.* 89, 208: *Yelv.* 179.

Where goods are pawned for money borrowed, without a day set for redemption, they are redeemable at any time during the life of the borrower. They may be redeemed after the death of him to whom pawned; but not after the death of him who pawned the goods. 2 *Cro.* 245: *Noy* 137: 1 *Bulst.* 9. But where a day is appointed, and the Pawner dieth before the day, his executors may redeem the Pawn at the day, and this shall be assets in their hands. 1 *Bulst.* 30, 31. If goods are redeemable at a day certain, it must be strictly observed; and the Pawnee, in case of failure of payment at the day, may sell them. 1 *Rol. Rept.* 181, 215. But still the right owner has his redemption in equity, as in case of a mortgage. 1 *Inst.* 205: *Shep.* 106.

He, who borrows money on a Pawn, is to have the pledge again, when he repays it; or he may have action for the detainer; and his tender of the money revests the special property. 2 *Cro.* 244. And it hath been held, that where a broker or Pawnee refuses (upon tender of the money) to redeliver the goods in Pawn, he may be indicted; because being secretly pawned, it may be impossible to prove a delivery for want of witnesses, if *trover* should be brought for them. 3 *Salk.* 268. Adjudged, that if goods are lost, after the tender of money, the Pawnee is liable to make them good to the owner; for, after tender, he is a wrongful detainer; and he who keeps goods wrongfully must answer for them at all events; his wrongful detainer being the occasion of the loss. *Cro. Jac.* 243: *Yelv.* 149; 1 *Bulst.* 29: *Bro. Bail-*

ment, 7: 1 *Rol. Rept.* 129: 1 *Inst.* 89. But if they are lost before a tender, it is otherwise; the Pawnee is not liable, if his care of keeping them was exact; and the law requires nothing of him, but only that he should use an ordinary care in keeping the goods, that they may be restored on payment of the money for which they were deposited; and in such case if the goods are lost, the Pawnee hath still his remedy against the Pawner for the money lent. 2 *Salk.* 522: 3 *Salk.* 268.

If the Pawn is laid up, and the Pawnee robbed, he is not in general answerable; though if the Pawnee useth the thing, as a jewel, watch, &c. that will not be the worse for wearing, which he may do, it is at his peril; and if he is robbed, he is answerable to the owner, as the using occasioned the loss, &c. 2 *Salk.* 522: 3 *Salk.* 268: see *Co. Litt.* 89. a: 3 *Inst.* 108: 4 *Co.* 83: *Palm.* 551: *Ow.* 123. *Yelv.* 178: *Cro. Jac.* 244: 1 *Bulst.* 29, 30: 1 *Rol. Rept.* 181. If the Pawn is of such a nature, that the keeping is a charge to the Pawnee, as a cow, or a horse, &c. he may milk the one, or ride the other; and this shall go in recompence for his keeping. Things, which will grow the worse by usage, as apparel, &c. he may not use. *Owen* 124.

A person borrowed 100*l.* on the Pawn of jewels, and took a note from the lender, acknowledging them to be in his hands, for securing the money; afterwards, he borrowed several other sums of the same person, for which he gave his notes, without taking any notice of the jewels. As in this case it was natural to think the lender would not have advanced the sums on note only, but on the credit of the pledge in his hands before; it was decreed in equity, that if the borrower would have his jewels, he must pay all the money due on the notes. *Preced. Chanc.* 419, 421.

A factor cannot pawn the goods of his principal. *Strange* 1178. He to whom goods are delivered for safe custody cannot pawn them. *Strange* 1187. There can be no market-overt for Pawning. *Ibid.* Where money is lent on a pledge, the borrower is personally liable to the payment, unless there be an agreement to the contrary. *Strange* 919. See further, this Dictionary, title *Bailment*; and *post.* *Pawn-brokers.*

PAWNAGE, In woods and forests for swine; see *Pannage.*

PAWN-BROKERS. By the Stamp Acts, Pawn-brokers are annually to take out a licence on a stamp.

By *stat.* 39, 40 *Geo.* 3. c. 99. rates of profit are allowed to Pawn-brokers; and regulations are made to prevent oppression by them, *viz.*

For every pledge upon which there shall have been lent not exceeding 2*s.* 6*d.* one halfpenny is allowed as interest, &c. for any time during which the said pledge shall remain in pawn, not exceeding one calendar month; and the same for every month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired. For 5*s.* one penny; 7*s.* 6*d.* one penny halfpenny; 10*s.* two-pence; 12*s.* 6*d.* two-pence halfpenny; 15*s.* three-pence; 17*s.* 6*d.* three-pence halfpenny; 1*l.* four-pence; and so on progressively and in proportion for any sum not exceeding 40*s.*; and for any intermediate sum between 2*s.* 6*d.* and 40*s.* at the rate of 4*d.* for 20*s.*

And for every sum exceeding 40*s.* and not exceeding 42*s.* eight pence; and for every sum exceeding 42*s.* and not exceeding 10*l.* at the rate of 3*d.* and no more for the loan of every 20*s.* of such money

lent by the calender month; and so in proportion for any fractional sum. § 1—3.

A party applying for the redemption of goods pawned, within seven days after the expiration of any month, may redeem them without paying any thing for the seven days, and applying after seven, and within fourteen days, pays the profit for one month and a half of another month; but after the expiration of the first fourteen days the Pawn-broker may take for the whole month. § 5.

Entries to be made and duplicates given. § 6, 7.

Any person fraudulently pawning the goods of another, and convicted before a justice, shall forfeit from 5*l.* to 20*s.* and also the value of the goods pawned, &c. to be ascertained by the justice; and on failure of payment, may be committed to the House of Correction, for not more than three months, and be publicly whipped; the forfeitures, when paid, to be applied towards making satisfaction to the party injured, and defraying the costs; the overplus, if any, to the poor of the parish. § 8.

Any person, counterfeiting or altering a duplicate, may be seized and taken before a justice; who is to commit the party to the House of Correction, for not more than three months, nor less than one. § 9.

If any person shall offer to pawn any goods, refusing to give a satisfactory account of himself, and the goods; or if there shall be reason to suspect that such goods are stolen; or if any person not entitled, shall attempt to redeem goods pawned; they may be taken before a Justice, who shall commit them for further examination: and if it appears that the goods were stolen, or illegally obtained, or that the person offering to redeem the same has no title or pretence to them; the Justice is to commit him to be dealt with according to law, where the nature of the offence shall authorize such commitment by any other law; or otherwise, for not more than three months. § 10.

Persons buying or taking in pledge unfinished goods, or any linen, &c. entrusted to be washed, shall forfeit double the sum lent, and restore the goods. § 11.

A justice may grant a search warrant; in executing which, a peace officer may break open doors, and the goods, if found, shall be restored to the owner. § 12, 13.

Pawn-brokers, refusing to deliver up goods pledged within one year, on tender of the money lent, and interest, on conviction, a Justice is empowered to commit the offender till the goods be delivered up, or reasonable satisfaction made. § 14.

Persons producing notes, are not to be deemed owners, unless on notice to the contrary from the real owner. § 15.

Duplicates being lost, the owners, on oath before a Justice, shall be entitled to another from the Pawn-broker. § 16.

Goods to be sold by public auction after the expiration of one year; being exposed to public view, and catalogues thereof published, and two advertisements of sale by the Pawn-broker to be inserted in some newspaper two days at least before the first day's sale under penalty of 10*l.* to 40*s.* to the owner. § 17.

Pictures, prints, books, statutes, &c. shall be sold only four times in a year. § 18.

Pawnbrokers receiving notice from the owners of goods before the expiration of a year, shall not dispose of them, until after the expiration of three months from the end of the said year. § 19.

Pawnbrokers to enter an account of sales in their books of all goods pawned for upwards of ten shillings; and in case of any overplus by the sale, upon demand within three years, it shall be paid to the owner, the necessary costs, principal, and interest being deducted; persons possessing duplicates entitled to the inspecting of the books; and in case the goods shall have sold for more than the sum entered, or the further entries not made, or the overplus is refused to be paid, the offender shall forfeit 10*l.* and treble the sum lent, to be levied by distress. § 20.

Pawnbrokers shall not purchase goods whilst in their custody, or suffer them to be redeemed for that purpose; nor lend money to any person appearing to be under twelve years of age, or intoxicated, or purchase duplicates of other Pawnbrokers, or buy any goods before eight in the forenoon, and after seven in the evening; nor receive any goods in pawn before eight in the forenoon or after eight at night, between *Michaelmas* and *Lady-day*, and before seven o'clock in the forenoon and after nine at night, during the remainder of the year; except till eleven o'clock on the evenings of *Saturday*, and that preceding *Good Friday* and *Christmas-day*; nor carry on the trade on any *Sunday*, *Good Friday*, or *Christmas-day*, or any *Fast* or *Thanksgiving-day*. § 20.

Pawnbrokers are to place in their shops a table of rates allowed by this act. § 21.

Pawnbroker's Christian and surname, and business, to be written over the door; under a penalty of 10*l.* half to the informer and half to the poor. § 23.

Pawnbrokers having sold goods illegally, or having embezzled or injured goods, Justices may award reasonable satisfaction to the owners, in case the same shall not amount to the principal and profit; or if it does, the goods shall be delivered to the owner, without paying any thing under a penalty of 10*l.* § 24.

Pawnbrokers to produce their books before any Justice, if required, on a penalty of 10*l.* to 5*l.* § 25.

Penalty on Pawnbrokers neglecting to make entry 10*l.* and for every offence against this act, where no penalty is provided, 40*s.* to 10*l.* half to the informer, the remainder to the poor. § 26.

Complaint shall, in all cases, be made within twelve months. § 27.

No person convicted of a fraud or felony may be an informer under this act. § 29.

Churchwardens to prosecute for every offence at the expence of the Parish, on notice from a Justice. § 28.

This act does not extend to persons lending money upon goods at 5 *per cent.* interest.

This act to extend to the executors, &c. of Pawnbrokers and Pawners. § 31.

The form of conviction is settled by § 33; and an appeal given to the Quarter Sessions. § 35.

PAYMENT of money *before* the day appointed, is in law Payment *at* the day; for it cannot, in presumption of law, be any prejudice to him, to whom the payment is made, to have his money before the time; and it appears, by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it. Yet it is said, that defendant must not plead, that the plaintiff accepted it in full satisfaction; but that he paid it in full satisfaction. 5 *Repts.* 117.

Payment of a lesser sum, in satisfaction of a greater, cannot be a satisfaction for the whole; unless the payment be before the day: though the gift of an horse, or robe, &c. in satisfaction, may be good. *Ibid.* And where damages are uncertain, a less thing may be done in satisfaction of a greater. 4 *Mod.* 89.

Upon *solvit ad diem* pleaded, it is good evidence to *prove Payment* at any time after the day, and before action brought; and Payment, although after the day, may be pleaded to any action of debt, upon bill, bond, or judgment, or *scire facias* upon a judgment. 2 *Lil. Abr.* 287. *Stat. 4 & 5 Ann. c.* 16. But see 1 *Stra.* 652; where, on such a plea, proof was made of interest paid two years *after* the day, whereby the plea was *falsified*; which was made on *presumption* only; as the debt had not been demanded for thirty years. And though Payment after the day is good by way of discharge, it will not be so by way of satisfaction. 4 *Mod.* 250. Payment is no plea to debt on covenant, or an obligation, without acquittance; but if the obligation have a condition, it is otherwise. *Dyer* 25, 169. If a bond, &c. be for Payment of money; and no day is set, damages cannot be recovered till a demand is made. *Bridge.* 20. See title *Bond*.

For payment of rent, there are said to be four times: 1. A voluntary time, that is not satisfactory, and yet good to some purpose: as where a lessee pays his rent before the day, this gives seisin of the rent, and enables him to whom paid to bring his assize for it. 2. A time voluntary and satisfactory in some cases; when it is paid the morning of the last day, and the lessor dies before the end of the day, this is a good Payment to bind the heir or executor, but not the King. 3. The legal, absolute, and satisfactory time, which is a convenient time before the last instant of the last day, and then it must be paid. The 4th is satisfactory, and not voluntary, but coercive when forced and recovered by suit at law. *Co. Litt.* 200: 10 *Rep.* 127: *Plowd.* 172. See title *Rent*.

Payment of money shall be directed by him who pays it, and not by the receiver, &c. 5 *Rep.* 117: *Cro. Eliz.* 68. If the payer does not apply the Payment, the receiver may; but he must not apply it to an uncertain demand, as to a debt from a testator. *Strange* 1194. In the payment of a testator's debts by executors, they are to pay first judgments, mortgages, rent due by lease, &c. then bonds and bills, &c. 1 *Roll. Abr.* 927. See title *Executor* V. 6.

A bill drawn on *A.* to pay money for value received, is a good discharge of a debt, though the bill be not paid, unless the creditor return the bill in convenient time. *Show.* 155. *A.* gives *B.* a bill of exchange on *C.* in payment of a former debt; this is not allowable as evidence on *non assumpsit*, unless paid; for a bill shall never go in discharge of a precedent debt, except it be part of the contract that it should be so. 1 *Salk.* 124. When a merchant draws a bill upon a correspondent, who accepts it, this is payment: for it makes him debtor to another person; who may bring his action. 10 *Mod.* 37. See title *Bill of Exchange*.

PAYMENT INTO COURT; See *Money into Court*.

PEACE, *Pax.*] In the general signification, is opposite to war or strife: but particularly in law, it intends a quiet behaviour towards the King and his Subjects. And if any man is in danger from another, and makes oath of it before a Justice of Peace, he shall be secured by good bond, which is called binding to the Peace. *Lam. Eiren. lib.*

2. *cap.* 2. 77: *Crompt. Just. of Peace*, 118, 129. And also frank-pledge and conservation of the Peace. Time of Peace is, when the Courts of justice are open; and Judges and ministers of the same may, by law, protect men from wrong, and administer justice to all. *Co. Litt.* 249.

All authority for keeping the Peace comes originally from the King, who is the Supreme Magistrate for preservation thereof; though it is said the King cannot take a recognizance of the Peace; because it is a rule in law that no one can take any recognizance, who is not either a justice of record, or by commission: also it is certain, that no duke, earl, or baron, as such, have any greater power to keep the Peace, than mere private persons. *Lamb. lib. 1. c. 3: Dalt. c. 1.* But the Lord Chancellor, or Lord Keeper of the Great Seal, the Lord High Steward, the Lord Marshal, and every Justice of the King's Bench, have, as incident to their offices, a general authority to keep the Peace throughout the realm and to award process for surety of the Peace, and take recognizances for it. And every Court of Record hath power to keep the Peace within its own precinct: as have likewise Sheriffs, who are entrusted with the custody of the counties, consequently have by it an implied power of keeping the Peace within the same; and coroners may bind persons to the Peace, who make an affray in their presence; but may not grant process of the Peace, &c. 2 *Hawk. P. C.*

Peace shall be kept, and justice and right duly administered to all persons. *Stat. 1 R. 2. c. 2, &c.*—Breakers of the Peace to be imprisoned, and to find sureties, &c. *Stats. 2 Ed. 3. c. 6: 34 Ed. 3. c. 1.* Recognizances for keeping the Peace to be certified to the quarter sessions. *Stat. 3 H. 7. c. 1.*—The Chancery and King's Bench restrained from granting process of the Peace or behaviour without motion and affidavit; and to give costs and damages to persons wrongfully vexed by such process, and restrained from granting *supersedeas*, unless the process is granted in the manner required by the statute. The said Courts to punish insufficient sureties. *Stat. 21 Jac. 1. c. 8.* Actions against peace-officers made local. *Stat. 21 Jac. 1. c. 12.* And the general issue pleadable. *Stat. 7 Jac. 1. c. 5: 21 Jac. 1. c. 12.* See this Dictionary, titles *Justice of Peace; Surety of the Peace; and post, Peace of the King.*

PEACE OF GOD AND THE CHURCH, *Pax Dei & Ecclesie.*] Was anciently used for that cessation which the King's Subjects had from trouble and suit of law between the terms, and on *Sundays* and holidays. See *Vacation.*

PEACE OF THE KING, *Pax Regis* mentioned in *stat. 6 R. 2. st. 1. c. 13.*] Is that Peace and security both for life and goods, which the King promiseth to all his Subjects, or others taken into his protection. And where an outlawry is reversed, a person is restored to the King's Peace, and this is termed *ad Pacem redire.* *Bract. lib. 3. c. 11.* This point of policy seems to have been borrowed by us from the *Feudists*, which, in the second book of the *Feuds, cap. 53,* intitled, *de Pace tenenda,* &c. *Hotoman* proveth. Of this *Hoveden* setteth down many branches. *Annal. H. 2. fol. 144, 330.* As to the Peace of the Church, see title *Sanctuary.* The Peace of the King's highway is the immunity that the King's highway hath to be free from annoyance or molestation. The Peace of the plough whereby the plough and the plough cattle are secured from distresses. *R. N. B. 90.* And fairs

have been said to have their Peace; because no man might be troubled in them for any debt contracted elsewhere.

PECIA, A piece or small quantity of ground. *Paroch. Antiq.* 240.

PECTORALE, A word often met with in old writings. Most authors agree that it is the same with that garment called *rationale*, which the high priest in the old law wore on his shoulders, as a sign of perfection. It is worn also by the high priest of the new law, as a sign of the greatest virtue. *Quæ gratia & ratione perficitur*; for which reason it is called *rationale*. It is by some taken to be that part of the pall which covers the breast of the priest, and from thence called *Pectorale*. But all agree that it is the richest part of that garment, embroidered with gold, and adorned with precious stones. *Cowell*.

PECTORAL, Armour for the breast, a breast-plate or petral, for a horse; from the Lat. *pectus*; it is mentioned in *stat.* 13 & 14 *Car.* 2. c. 3.

PECULIAR, Fr. *peculier*, i. e. private.] A particular parish or church, that hath jurisdiction within itself, and power to grant administration or probate of wills, &c. exempt from the Ordinary.

There are Royal Peculiars, and Archbishops' Peculiars: the King's chapel is a Royal Peculiar, exempted from all spiritual jurisdiction, and reserved to the immediate government of the King: there are also some peculiar ecclesiastical jurisdictions belonging to the King, which formerly appertained to Monasteries and Religious Houses. It is an antient privilege of the See of *Canterbury*, that wherever any manors or advowsons belong to it, they forthwith become exempt from the Ordinary, and are reputed Peculiars of that see; not because they are under no Ordinary, but because they are not under the Ordinary of the diocese, &c. For the jurisdiction is annexed to the Court of Arches, and the judge thereof may originally cite to these Peculiars of the Archbishop. *Wood's Inst.* 504.

The Court of Peculiars of the Archbishop of *Canterbury*, hath a particular jurisdiction in the city of *London*, and in other dioceses, &c. within his province: in all, fifty-seven peculiars. 4 *Inst.* 338: *Stat.* 22 & 23 *Car.* 2. c. 15. There are some Peculiars which belong to Deans and Chapters, or a Prebendary, exempted from the Archdeacon only: they are derived from the Bishop of antient composition, and may be visited by the Bishop in his primary or triennial visitation: in the mean time, an Official of the Dean and Chapter, or Prebendary is the Judge; and from hence the appeal lies to the Bishop of the diocese. *Wood* 504. Appeal lieth from other Peculiar Courts to the King in Chancery. *Stat.* 25 *H.* 8. c. 19. The Dean and Chapter of *St. Paul's* have a Peculiar jurisdiction; and the Dean and Chapter of *Salisbury* have a large Peculiar within that diocese; so have the Dean and Chapter of *Litchfield*, &c. 2 *Nels. Abr.* 1240, 1241.

There is mention in our books of Peculiars of Archdeacons; but they are not properly Peculiars, only subordinate jurisdictions; and a Peculiar is *primâ facie* to be understood of him who hath a co-ordinate jurisdiction with the Bishop. *Hob.* 185: *Mod. Ca.* 308. If an Archdeacon hath a peculiar authority by commission, this shall not take away the authority of the Bishop; but, if he hath authority and jurisdiction by prescription, it is said, it shall. 2 *Roll. Rep.* 357. Where a man dies intestate, leaving goods in several Peculiars, it has been held, that the Archbishop is to grant administration. *Sid.*

90: 5 *Mod.* 239. See 16 *Vin. Abr.* title *Peculiars*; and this Dictionary, title *Courts Ecclesiastical* 4.

PECUNIA, Properly money, but antiently used for cattle, and sometimes for other goods as well as money. So we find often in *Domesday*, *Pastura ibidem ad Pecuniam villæ*, that is, pasture-ground for the cattle of the village. *Cowell*.

PECUNIA SEPULCHRALIS, *LL. Canuti*, 102.] Money antiently paid to the priest at the opening of the grave, for the good of the deceased's soul. This the *Saxons* called *saulsceat*, *saulscot*, and *anima symbolum*. *Spel. de Concil. t. 1. f.* 517. See *Mortuary*.

PECUNIARY, All punishments of offences were antiently Pecuniary, by mulct, &c. See *Fine*.

PECUNIARY CAUSES, Cognizable in the *Ecclesiastical Courts*; are such as arise either from the withholding ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby damage accrues to the plaintiff; towards obtaining a satisfaction for which he is permitted to institute a suit in the Spiritual Court. For the principal of these causes, see 3 *Comm.* 88; and this Dictionary, titles *Courts Ecclesiastical*; *Tithes*; *Spoliation*; *Dilapidation*.

PECUNIARY LEGACY; See titles *Executor*; *Legacy*.

PEDAGE, *pedagium*.] Money given for the passing by foot or horse through any country. *Cassan. de Cons. Burgun.* 118: *Spelm.* This word is likewise mentioned by *Mat. Paris*, anno 1256.

PEDALE, A foot cloth, or piece of tapestry laid on the ground to tread on, for greater state and ceremony. *Ingulph.* page 41.

PEDIS ABSCISSIO, Cutting off the foot; a punishment on criminals, antiently inflicted here, instead of death; as appears by the laws of *William*, called *The Conqueror*, *cap.* 7; so, in *Ingulphus*, *p.* 856: *Fleto*, *lib.* 1. *c.* 38: *Bracton*, *lib.* 3. *cap.* 32: *Monast.* 1 *tom.* page 166.

PEDLARS, See *Hawkers*.

PEDONES, Foot-soldiers. *Simeon of Durham*, anno 1085.

PEERAGE. The dignity of the Lords or Peers of the realm. See *Peers of the Realm*.

PEERS, *Peers*;] Signify, in law, those who are impanelled in an inquest upon a man, for convicting or clearing him of any offence; the reason is, because the custom of the realm is to try every man in such case by his Peers or equals. See *stats. Westm.* 1. 3 *E.* 1. *cap.* 6: *Mag. Car. c.* 29. And in this sense, it is in use with other nations. *Cowell*.

And as every one of the Nobility, being a Lord of Parliament, is a Peer, or equal to all the other Lords, though of several degrees; so the Commons are Peers to one another, although distinguished as Knights, Esquires, Gentlemen, &c. 2 *Inst.* 29: 3 *Inst.* 31. See *post*, title *Peers of the Realm*.

PEERS OF FEES. The word Peer denoted originally one of the same rank; afterwards, it was used for the vassals or tenants of the same Lord, who were obliged to serve and attend him in his Courts, being equal in function: these were termed Peers of Fees, because holding fees of the Lord; or because their business in Court was to sit and judge under their Lord, of disputes arising on fees; but if there were too many in one lordship, the Lord usually chose twelve, who had the title of Peers, by way of distinction; from whence, it is said, we derive our common juries, and other Peers. *Cowell*.

PEERS OF THE REALM.

PARES REGNI; PROCERES.] The Nobility of the Kingdom, and Lords of Parliament; who are divided into *Dukes, Marquesses, Earls, Viscounts, and Barons*. And the reason why they are called Peers is, that notwithstanding a distinction of dignities in our Nobility, yet in all public actions they are equal; as in their votes of Parliament, and trial of any nobleman. *S. P. C. lib. 3.* The appellation seems to have been borrowed from *France*, from those twelve Peers that *Charlemagne* instituted in that kingdom, called *Pares, vel Patricii Francia*.

- I. *Of the Titles and Origin of the several Degrees of Nobility.*
- II. *The Manner in which they may be created, and limited; and how forfeited.*
- III. *Of the Privileges of Peers, (and see tit. Privilege.)*
- IV. *The Mode of their Trial in capital Cases.*

I. ALL degrees of nobility and honour are derived from the King as their fountain, and he may institute what new titles he pleases. Hence it is that all degrees of nobility are not of equal antiquity.

A *Duke* though he be in *England*, in respect of his title of nobility, inferior in point of antiquity to many others, yet is superior to all of them in rank; his being the first title of dignity after the royal family. *Camden Britan.* title *Ordines*. Among the *Saxons* the *Latin* names of *Dukes, duces*, is very frequent; and signified, as among the *Romans*, the commanders or leaders of their armies, whom in their own language they called *heretoge*, and in the laws of *Henry I.* (as translated by *Lambard*) they are called *heretochii*. But after the *Norman* conquest, which changed the military polity of the nation, the Kings themselves continuing for many generations *Dukes of Normandy*, they would not honour any Subjects with the title of *Duke* till the time of *Edward III.*; who claiming to be King of *France*, and thereby losing the ducal in the royal dignity in the eleventh year of his reign, created his son, *Edward the Black Prince, Duke of Cornwall*; and many of the Royal Family especially were afterwards raised to the like honour. This reason, however, does not seem very satisfactory, as in fact this order of Nobility was created about a year before *Edw. III.* assumed the title of King of *France, A. D. 1337. Henry's Hist. Eng. viii. 135. (8vo.)* See this Dictionary, titles *Duke; King II.*

In the reign of *Queen Elizabeth, A. D. 1572*, the whole order became utterly extinct; (*Camden. Britan.* title *Ordines: Spelman. Gloss. 191;*) but it was revived about fifty years afterwards by her Successor, who was remarkably prodigal of honours, in the person of *George Villiers Duke of Buckingham. 1 Comm. c. 12.*

A *Marquess, (Marchio,)* is the next degree of nobility. His office formerly was (for dignity and duty were never separated by our ancestors) to guard the frontiers and limits of the kingdom; which were called the marches from the Teutonic word, *marche*, a limit: such as, in particular, were the marches of *Wales* and *Scotland*, while each continued to be an enemy's country. The persons who had commanded there were called *Lords-Marchers, or Marquesses*; whose authority was abolished by *stat. 27 Hen. 8. c. 27. (26?)*, though the title had long before been made a mere ensign of honour; *Robert Vere, Earl of Oxford*, being created *Marquis of Dublin*, by *Richard II.* in

the 8th year of his reign. 2 *Inst.* 5. See this Dictionary, title *Marquess*.

An *Earl* is a title of nobility so antient, that its original cannot be clearly traced out. Thus much seems tolerably certain: that among the *Saxons* they were called *ealdormen*, quasi elder men, signifying the same as senior or senator among the *Romans*; and also *sciremen*, because they had each of them the civil government of a several division or shire. On the irruption of the *Danes*, they changed the names to *Eorles*, which, according to *Camden*, signified the same in their language. *Britan. tit. Ordines*. In *Latin* they are called *Comites*, (a title first used in the Empire,) from being the King's attendants; à *societate nomen sumfiserunt, Reges enim tales sibi associant. Bracton, lib. 1. c. 8: Flet. l. 1. c. 5*. After the *Norman* conquest, they were for some time called Counts or Countees, from the *French*; but they did not long retain that name themselves, though their shires are from thence called counties to this day. The name of *Earls* or *Comites* is now become a mere title; they having nothing to do with the government of the county, which is now entirely devolved on the Sheriff, the Earl's deputy or *vice-comes*. In writs and commissions, and other formal instruments, the King, when he mentions any Peer of the degree of an Earl, usually stiles him, "trusty and well-beloved *cousin*;" an appellation as antient as the reign of *Henry IV.*: who, being either by his wife, his mother, or his sisters, actually related or allied to every Earl then in the kingdom, artfully and constantly acknowledged that connection in all his letters and other public acts: from whence the usage has descended to his successors, though the reason has long ago failed. See title *Earl*.

The name of *vice-comes*, or *Viscount*, was afterwards made use of as an arbitrary title of honour, without any shadow of office pertaining to it, by *Henry VI.*; when in the eighteenth year of his reign, he created *John Beaumont*, a Peer, by the name of Viscount *Beaumont*; which was the first instance of the kind. 2 *Inst.* 5. (See *Barrington* on the Antient Statutes, 409, 410.)

The title of *Baron* is the most general and universal title of nobility; for originally every one of the Peers of superior rank had also a barony annexed to his other titles. 2 *Inst.* 5, 6. But it hath sometimes happened that, when an antient baron hath been raised to a new degree of peerage, in the course of a few generations, the two titles have descended differently; one perhaps to the male descendants, the other to the heirs-general; whereby the earldom, or other superior title, hath subsisted without a barony; and there are also modern instances, where Earls and Viscounts have been created without annexing a barony to their other honours: so that now the rule doth not hold universally, that all Peers are Barons. The original and antiquity of baronies have occasioned great inquiries among our English antiquaries. The most probable opinion seems to be, that they were the same with our present lords of manors; to which the name of Court-baron (which is the Lord's Court, and incident to every manor) gives some countenance. It may be collected from King *John's Magna Carta*, c. 14, that originally all lords of manors, or Barons, that held of the King *in capite* had seats in the Great Council of Parliament: till, about the reign of that Prince, the conflux of them became so large and troublesome, that the King was obliged to divide them, and summon only the greater Barons in person; leaving the small

ones to be summoned by the Sheriff; and (as it is said) to sit by representation in another House; which gave rise to the separation of the two Houses of Parliament. *Gilb. Hist. of Exch. c. 3: Seld. Title of Hon. 2. 5. 21.* See title *Parliament*. By degrees the title came to be confined to the greater Barons, or Lords of Parliament only; and there were no other Barons among the peerage but such as were summoned by writ, in respect of the tenure of their lands or baronies, till *Richard I.* first made it a mere title of honour, by conferring it on divers persons by his letters patent. *1 Inst 9: Seld. Jan. Angl. 2 § 66.*

Before the time of King *Ed. III.* there were but two titles of nobility, *viz.* Earls and Barons: the Barons were originally by tenure, afterwards created by writ, and after that by patent; but Earls were always created by letters patent. *Seld. 536.* See *1 Comm. c. 12. p. 398. in n.* And *Hen. VI.* created *Edmund of Hadham*, Earl of *Richmond*, by patent, and granted him precedency before all other Earls. *Mary I.* likewise granted to *Henry Ratcliff*, Earl of *Sussex*, a privilege by patent beyond any other nobleman, *viz.* that he might at any time be covered in her presence, like unto the grandees of *Spain*; and some few others of our Nobility have had this honour. *Dict.*

The *stat. 31 Hen. 8. c. 10.* settles the precedency of the Lords of Parliament, and great Officers of State: after whom, the Dukes, Marquesses, Earls, Viscounts, and Barons, take place according to their antienty; but it is declared, that precedence is in the King's disposition. See this Dictionary, title *Precedence*.

A dignity of Earl, &c. is a title by the Common Law; and if a patentee be disturbed of his dignity, the regular course is to petition the King, who indorses it, and sends it into Chancery. *Staundf. Prærog. 72: 22 Edw. 3.*

There are now no feudal baronies; but there are Barons by succession, and those are the Bishops; who, by virtue of antient baronies held of the King, (into which the possessions of their bishoprics have been converted,) are called by writ to Parliament, and have place in the House of Peers as Lords Spiritual: the temporal possessions of Bishops are held by their service to attend in Parliament when called; and that is in the nature of a barony. See *fiost. II. III.*

II. THE right of Peerage seems to have been originally territorial; that is, annexed to lands, honours, castles, manors, and the like; the proprietors and possessors of which were (in right of those estates) allowed to be Peers of the Realm, and were summoned to Parliament to do suit and service to their Sovereign; and, when the land was alienated, the dignity passed with it as appendant. Thus the Bishops still sit in the House of Lords in right of successions to certain antient baronies annexed, or supposed to be annexed, to their episcopal lands. *Glan. l. 7. c. 1.* And thus, in *11 Hen. 6.* the possession of the castle of *Arun- del* was adjudged to confer an earldom on its possessor. *Seld. Tit. of Hon. b. 2. c. 9. § 5.* Afterwards, when alienations grew to be frequent, the dignity of peerage was confined to the lineage of the party ennobled; and, instead of territorial, became personal. Actual proof of a tenure by barony became no longer necessary to constitute a Lord of Parliament; but the record of the writ of summons to him, or his ancestors, was admitted as a sufficient evidence of the tenure. *1 Comm. c. 12.* The estates and dignities attached to the castle of *Arun- del* are now inalienably vested in the family of the Duke of *Norfolk*;

see private acts, 3 *Car.* 1. c. 4: 37 *Geo.* 3. c. 40: 41 *Geo.* 3. (*U. K.*) c. xv.

Peers are now created either by writ, or by patent; for those who claim by prescription must suppose either a writ or patent made to their ancestors; though, by length of time, it is lost. The creation by writ, or the King's letter, is a summons to attend the House of Peers, by the style and title of that barony, which the King is pleased to confer; that by patent is a royal grant to a Subject of any dignity and degree of peerage. The creation by writ is the more antient way; but a man is not ennobled thereby, unless he actually takes his seat in the House of Lords: and some are of opinion that there must be at least two writs of summons, and a sitting in two distinct Parliaments, to evidence an hereditary barony. *Whitlocke of Parl.* ch. 114. The most usual way, therefore, because the surest, is to grant the dignity by patent; which enures to a man and his heirs according to the limitations thereof, though he never himself makes use of it. *Co. Litt.* 16. Yet it is frequent to call up the eldest son of a Peer to the House of Lords by writ of summons, in the name of his father's barony: because in that case there is no danger of his children's losing the nobility, in case he never takes his seat; for they will succeed to their grandfather. And where the father's barony is limited by patent to him, and the heirs-male of his body, and his eldest son is called up to the House of Lords by writ, with the title of this barony, the writ in this case will not create a fee or a general estate tail, so as to make a female capable of inheriting the title; but upon the death of the father the two titles unite, or become one and the same. *Ex parte Eliz. Perry, Bro. P. C.* Creation by writ has also one advantage over that by patent: for a person created by writ holds the dignity [in tail] to him and his heirs, without any words to that purport in the writ; but in letters patent there must be words to direct the inheritance, else the dignity enures only to the grantee for life. *Co. Litt.* 9. 16. For a man or woman may be created noble for their own lives, and the dignity not descend to their heirs at all, or descend only to some particular heirs: as where a peerage is limited to a man, and the heirs male of his body, by *Elizabeth* his present lady; and not to such heirs by any former or future wife. And it is to be observed, that though the opinion of Lord *Coke* is to the contrary, it is now understood, that a creation by writ does not confer a fee-simple in the title, but only an estate-tail-general: for every claimant of the title must be descended from the person first ennobled. 1 *Woodd.* 37: 1 *Comm.* c. 12, & n.

In case of creation by patent, the person created must have the inheritance limited by apt words; as to him and his heirs, or the heirs male of his body, heirs of his body, &c. otherwise he shall have no inheritance. 2 *Inst.* 48.

The King may create either man or woman noble for life only: and peerage may be gained for life, by act of law; as if a Duke take a wife, she is a Dutchess in law by the intermarriage; so of a Marquess, Earl, &c. 1 *Inst.* 16: 9 *Rep.* 97. Also the dignity of an Earl may descend to a daughter, if there be no son, who shall be a Countess; and if there are many daughters, it is said, the King shall dispose of the dignity to which daughter he pleases. 1 *Inst.* 165: *Woodd.*'s *Inst.* 42. See titles *Peeress*; *Descent* III. If a person is summoned as a Baron to Parliament by writ, and, sitting, die, leaving two or

more daughters, who all dying, one of them only leaves issue a son, such issue has a right to demand a seat in the House of Peers. *Skin.* 441.

Thomas de la Warre was summoned to Parliament by writ, *anno* 3 *Hen.* 8; and *William* his son, *anno* 3 *Edw.* 6. was disabled by attainder to claim any dignity during his life, but was afterwards called to Parliament by Queen *Elizabeth*, and sat there as Puisne Lord, and died; then *Thomas*, the son of the said *William*, petitioned the Queen in Parliament to be restored to the place of *Thomas* his grandfather; and all the Judges, to whom it was referred, were of opinion that he should; because his father's disability was not absolute by attainder, but only personal and temporary, during his life: and the acceptance of the new dignity by the petitioner shall not hurt him; so that when the old and new dignity are in one person, the old shall be preferred. 11 *Rep.* 1.

Where nobility is gained by writ, or patent, without descent, it is triable by record; but when it is gained by matter of fact, as by marriage, or where descents are pleaded, nobility is triable *per pais.* 22 *Assis.* 24: 3 *Salk.* 243. A person petitioned the Lords in Parliament to be tried by his Peers; the Lords disallowed his peerage, and dismissed the petition: and it was held in this case, that the defendant's right stood upon his letters-patent, which could not be cancelled but by *scire facias*: and that the Parliament could not give judgment in a thing which did not come in a judicial way before that Court. 2 *Salk.* 510, 511: 3 *Salk.* 245. Where peerage is claimed *ratione Baronii*, as by a Bishop, he must plead that he is *unus parium Regni Angliæ*; but if the claim is *ratione nobilitatis*, he need not plead otherwise than pursuant to his creation. 4 *Inst.* 15: 3 *Salk.* 243.

When a Lord is newly created, he is introduced into the House of Peers, by two Lords of the same rank in their robes, Garter King at Arms going before, and his Lordship is to present his writ of summons, &c. to the Lord Chancellor; which being read, he is conducted to his place; and Lords by descent, where nobility comes down from the ancestors, and is enjoyed by right of blood, are introduced with the same ceremony, the presenting of the writ excepted. *Lex Constitutionis* 79.

A Nobleman, whether native or foreigner, who has his nobility from a foreign state, although the title of dignity be given him, (as the highest and lowest degrees of nobility are universally acknowledged,) in all our legal proceedings no notice is taken of his nobility; for he is no Peer: and the laws of *England* prohibit all Subjects to receive any hereditary title of honour or dignity, from any foreign Prince, without consent of the Sovereign. *Lex Constitutionis* 80, 81.

An Earldom consists in office, for defence of the kingdom; and of rents and possessions, &c. and may be entailed as any other office may, and as it concerns land: but the dignity of peerage cannot be transferred by fine; because it is a quality affixed to the blood, and so merely personal, that a fine cannot touch it. 2 *Salk.* 509: 3 *Salk.* 244.

A Peer cannot lose his nobility, but by death or attainder; though there was an instance in the reign of *Edw.* IV. of the degradation of *George Neville* Duke of *Bedford* by act of Parliament, on account of his poverty, which rendered him unable to support his dignity. 4 *Inst.* 355. But this is a singular instance: which serves at the same time, by having happened, to shew the power of Parliament; and, by hav-

ing happened but once, to shew how tender the Parliament hath been, in exerting so high a power. It hath been said indeed, that if a Baron wastes his estate, so that he is not able to support the degree, the King may degrade him; but it is expressly held by later authorities, that a Peer cannot be degraded but by act of Parliament. *Moor* 678: 12 *Rep.* 107: 12 *Mod.* 56.

George Neville Duke of Bedford was degraded by act of Parliament, 16 *June*, 17 *Ed.* 4. The preamble of the statute, reciting, that the said *George* hath not, nor may have, any livelihood to support his name, estate, and dignity, or any name of estate; and that it is oftentimes seen when a lord is called to high estate, and hath not convenient livelihood to support the dignity, it induceth great poverty, and often causeth great extortion, embracery, and maintenance, to the great trouble of all such counties where such estate shall happen to be: wherefore the King, by advice of his Lords and Commons, ordaineth, establisheth, and enacteth, That from henceforth the same creation and making of the said Duke, and all the names of dignity given to the said *George*, or to *John Neville* his father, be from henceforth void and of none effect, &c.

In which act these things are to be observed: First, that although the Duke had not any possessions to support his dignity; yet his dignity could not be taken from him without an act of Parliament. Secondly, The inconveniences appear, where a great state and dignity is, and no livelihood to maintain it. Thirdly, It is a good reason to take away such dignity by act of Parliament; therefore the statute *de absentibus* made at a Parliament holden at *Dublin* in *Ireland*, the 10th of *May*, 28 *H.* 8. by reason of the long absence of *George Earl of Shrewsbury* out of that realm, shall be expounded, according to the general words of the writ, to take away such inconvenience. 12 *Rep.* 106, 107. *Earl of Shrewsbury's* case.

Though dignities of peerage are granted from the Crown; yet they cannot be surrendered to the Crown, except it be, in order to new and greater honours; nor are they transferable, unless they relate to an office: and notwithstanding there are instances of earldoms being transferred, and wherein one branch of a family sat in the House of Peers, by virtue of a grant from the other branch, particularly in the reigns of *Hen. III.* and *Ed. II.* these precedents have been disallowed. *Lex Constitutionis* 85, 86, 87. And it seems now to be settled that a peerage cannot be transferred (unless we consider the summoning of the eldest son of a Peer by writ as a transfer of one of his father's baronies) without the concurrence of Parliament: at least in those cases where the noble personage has no barony to remain in himself: as otherwise on the transfer he would himself be deprived of his peerage, and be made ignoble by his own act. It is a maxim that the whole nation is interested in each individual Peer, and that a Peer cannot be deprived of his peerage but by act of Parliament. See *Watkins's Notes on Gilbert's Tenures*, note xi. on *p.* 11. and *p.* 361.

A personal honour or dignity may be forfeited, on committing treason, &c. for it is implied by a condition in law, that the person dignified shall be loyal; and the office of an Earl, &c. is *ad consulendum Regem tempore pacis & defendendum tempore belli*, therefore he forfeits it when he takes counsel or arms against the King. 7 *Rep.* 33.

With respect to the limitation of the number of the Peers of *Ireland*, see this Dict. titles *Ireland*; *Parliament*.

III. OF the Privileges of Peers as Members of the Upper House of Parliament, see this Dictionary, title *Parliament*.

All Peers of the realm are also looked upon as the King's hereditary counsellors, and may be called together by the King to impart their advice in all matters of importance to the realm, either in time of Parliament, or, which hath been their principal use, when there is no Parliament in being. *Co. Litt.* 110.

Instances of conventions of the Peers, to advise the King, have been in former times very frequent, though now fallen into disuse, by reason of the more regular meetings of Parliament. Many instances of this kind of meeting are to be found under our antient Kings: though the former method of convoking them had been so long left off, that when *Charles I.* in 1640, issued out writs under the Great Seal to call a great council of all the Peers of *England*, to meet and attend his Majesty at *York*, previous to the meeting of the Long Parliament, the Earl of *Clarendon* mentions it as a new invention, not before heard of; that is, as he explains himself, so old, that it had not been practised in some hundreds of years. But, though there had not so long before been an instance, nor has there been any since, of assembling them in so solemn a manner, yet in cases of emergency, our princes have at several times thought proper to call for and consult as many of the nobility as could easily be got together; as was particularly the case with King *James the Second*, after the landing of the Prince of *Orange*, and with the Prince of *Orange* himself, before he called that Convention-parliament, which afterwards called him to the throne. 1 *Comm.*

Besides this general meeting, it is usually looked upon to be the right of each particular Peer of the realm, to demand an audience of the King, and to lay before him, with decency and respect, such matters as he shall judge of importance to the public. And therefore in the reign of *Edw. II.* it was made an article of impeachment in Parliament against the two *Hugh Spencers*, (father and son,) for which they were banished the kingdom, "that they by their evil covin would not suffer the great men of the realm, the King's good Counsellors, to speak with the King, or to come near him; but only in the presence and hearing of the said *Hugh* the father, and *Hugh* the son, or one of them, and at their will, and according to such things as pleased them." 4 *Inst.* 53. See 1 *Comm.* 227—9.

We are next to consider the general privileges which attach to the persons of Peers in their individual capacity.

Peers are created for two reasons; 1st. *ad consulendum*, 2d, *ad defendendum Regem*; for which reasons the law gives them certain great and high privileges, such as freedom from arrests, &c. even when no Parliament is sitting; because the law intends, that they are always assisting the King with their counsel for the commonwealth; or keeping the realm in safety by their prowess and valour. 1 *Comm.* 227.

In certain criminal cases, that is to say, on indictments for treason and felony, and misprision thereof, a nobleman shall be tried by his Peers; but in all misdemeanors, as libels, riots, perjuries, conspiracies, &c. he is to be tried, like a commoner by a jury. 3 *Inst.* 30: 2 *Hawk. P. C. c.* 44. § 13. So in case of an appeal of felony he shall be

tried by a jury. 9 *Repl.* 30: 2 *Inst.* 49: 10 *E.* 4. 6. b: 3 *Inst.* 30. And the indictments of Peers for treason or felony, are to be formed by freeholders of the county: and then the Peers shall plead before the Lord High Steward, &c. 1 *Inst.* 156: 3 *Inst.* 28. See *post* IV.

The privilege of Peers extends only to the Peers of *Great Britain*; so that a Nobleman of any other country, or a Lord of *Ireland*, hath not any other privileges in this kingdom than a common person: also the son and heir apparent of a Nobleman is not entitled to the privilege of being tried by his Peers, which is confined to such person as is a *Lord of Parliament* at the time; but it seems that an infant Peer is privileged from arrests, his person being held sacred. *Co. Litt.* 156: 2 *Inst.* 48: 3 *Inst.* 30. See titles *Arrest; Privilege; Process.*

The Peers of *Scotland* or *Ireland* had no privilege in this kingdom before the Union: but by clauses in the respective articles of Union, the elected Peers have all the privileges of Peers of Parliament; also all the rest of the Peers of *Scotland* and *Ireland* have all the privileges of the peerage of *England*, excepting only that of sitting and voting in Parliament. See titles *Scotland: Ireland: Parliament.*

A *Roman Catholic* Peer is not entitled to the privilege of franking letters. 2 *Bos.* and *Pul.* 139.

The right of trial by their Peers, it seems now generally admitted, does not extend to Bishops: though the reason given for this exception, *viz.* that they are not ennobled in blood, and consequently not Peers with the nobility, does not seem sufficiently satisfactory. And it has been suggested, that if any instances of trials of this sort by a Jury had occurred in remote times, the Bishops could not have demanded a trial in Parliament, without admitting themselves subject to temporal jurisdiction; from which they then claimed exemption: and hence it may be conjectured the Bishops have lost their right to be tried in Parliament, though only two instances can be found of their being tried by Jury, *viz.* those of Archbishop *Cranmer* and Bishop *Fisher.* 2 *Hawk. P. C. c.* 44. § 12.

Some Bishops have been tried by Peers of the Realm; but it hath been when impeached by the House of Commons, as upon special occasions many others have been who have not been Peers. The Bishops may however claim all the privileges of the Lords Temporal; except that they cannot be tried by their Peers, and that they cannot, in capital cases, pass upon the trial of any other Peers, they being prohibited by canon to be judges of life and death, &c. They usually therefore withdraw voluntarily, but enter a protest, declaring their right to stay. See further, title *Bishops*, and 4 *Comm. c.* 19.

A Peer, or Peeress (either in her own right or by marriage,) cannot be arrested in civil cases. *Finch. L.* 355: 1 *Ventr.* 298. They have also many peculiar privileges annexed to their peerage in the course of judicial proceedings. A Peer, sitting in judgment, gives not his verdict upon oath, like an ordinary jurymen, but upon his honour. 2 *Inst.* 49. He answers also to bills in Chancery upon his honour, and not upon his oath; 1 *P. Wms.* 146; but, when he is examined as a witness either in civil or criminal cases, or on Interrogatories in Chancery, he must be sworn, (whether in inferior Courts, or in the High Court of Parliament); for the respect which the law shews to the honour of a Peer, does not extend so far as to overturn a settled maxim, that *in judicio non creditur nisi juratis.* *Salk.* 512:

Cro. Car. 64. The honour of Peers is however so highly tendered by the law, that it is much more penal to spread false reports of them and certain other great officers of the realm, than of other men: scandal against them being called by the peculiar name of *scandalum magnatum*, and subjected to peculiar punishments by divers antient statutes. *Stats. West.* 1. 3 *Edw.* 1. c. 34: 2 *Ric.* 2. st. 1. c. 5: 12 *Ric.* 2. c. 11. See titles *Scandalum Magnatum; Libel; Privilege.*

As to the privileges of Peers in cases of actions against them, see this Dictionary, title *Parliament.*

With respect to the privileges of Peeresses, see *post*, title *Peeresses.*

As to the general privileges of Peers, something more at length, and in various instances, see further this Dictionary, title *Privilege.*

At Common Law, it was lawful for any Peer to retain as many chaplains as he would; but by *stat.* 21 *H.* 8. c. 13. their number is limited. See title *Chaplains.* In many cases, the protestation of honour shall be sufficient for a Peer; as in trial of Peers, they proceed upon their honour, not upon oath; and if a Peer is defendant in a court of Equity, he shall put in his answer upon his honour, (though formerly it was to be on oath): and in action of debt upon account the plaintiff being a Peer, it shall suffice to examine his attorney, and not himself on oath; but where a Peer is to answer interrogatories, or make an affidavit, as well as where he is to be examined as a witness, he must be upon his oath. *Bract. lib.* 5. c. 9: 9 *Rep.* 49: 3 *Inst.* 29: *W. Jones*, 152: 2 *Salk.* 512.

In the pleas of Parliament, 18 *Ed.* 1. between the Earl of *Gloucester* and Earl of *Hereford*, on long debate whether *John D. Hastings*, a baron, ought to be sworn, because he was a Peer of the Realm, it was resolved that he ought to lay his hand on the book. The like was resolved, 10 *Car.* in *B. R.* by the Court, where the Lord *Dorset's* testimony was requisite. See *Dy.* 314. *b. marg. fl.* 98.

A bill was against a Peeress to discover deeds, she answers on her honour and confesses deeds. She shall produce them only upon her honour, and not on oath. *Ch. Prec.* 92.

A *subpœna* shall not be awarded against a Peer out of the Chancery, in a cause; but a letter from the Lord Chancellor, or Lord Keeper, in lieu thereof. See title *Chancery.* A Peer may not be impanelled upon any inquest, though the cause hath relation to two Peers; and if a Peer be returned on a Jury, a special writ shall issue for his discharge from service. The houses of Peers shall not be searched for conventicles, but by warrant under the sign manual, or in the presence of the Lord Lieutenant, or one Deputy Lieutenant, and two Justices of the peace. *Stat.* 22 *Car.* 2. c. 1: and it is expressly provided by *stat.* 13 & 14 *Car.* 2. c. 1. against non-conformists, that for every third offence, which is punishable by transportation, Lords of Parliament shall be tried by their Peers.

A nobleman menacing another person, whereby such other person fears his life is in danger, no writ of *supplicavit* shall issue, but a *subpœna*; and when the Lord appears, instead of surety, he shall only promise to keep the peace. 35 *H.* 6. See title *Surety of the Peace.*

The privilege of a Peer is so great in respect of his person, that the King may not restrain him of his liberty, without order of the House of Lords, except it be in cases of treason, &c. A memorable

case wherein was that of the Earl of *Arundel* imprisoned by the King in the reign of King *Charles I.*

Every Lord of Parliament is allowed his clergy in all cases, where others are excluded by the *stat. 1 Ed. 6. c. 12.* except wilful murder; and cannot be denied clergy for any other felony wherein it was grantable at Common Law, if it be not ousted by some statute made since the first of King *Ed. 6. S. P. C. 130.* Lord *Morley*, who was tried by his Peers for murder, and found guilty of manslaughter, was discharged without clergy. *Sid. 277: 2 Nels. Abr. 1181.* See title *Clergy, Benefit of.*

In ejectment a special verdict was found on a trial at bar, and judgment for defendant, and costs taxed; and after affidavit of the demand of costs, a motion was made for an attachment against the Duchess (the Duke being dead), she being one of the lessors, for non-payment of costs; and it was alleged, that if the Court did not grant it, the defendant would be remediless; for though in other cases a *distringas* issues against Peers, yet in this case no process can go but an attachment. The Court refused to grant an attachment against the person of the Duchess, but ordered her to shew cause why an attachment, as to her goods and chattels, should not be issued; which rule was afterwards made absolute. *Rep. of Pract. in C. B. 7, 8.* See title *Attachment.*

A Peer, or Lord of Parliament, cannot be an approver; for it is against *Magna Carta* for him to pray a coroner. *3 Inst. 129. c. 56: 2 Hawk. Pl. C. c. 24. § 3.*

If a bill in Chancery be exhibited against a Peer, the course is first for the Lord Keeper to write a letter to him; and if he doth not answer, then a *subpœna*; then an order to shew cause why a sequestration should not go; and if he still stands out, then a sequestration. And the reason is, because there can be no process of contempt against his person. *2 Vent. 342.* See title *Chancery; Privilege.*

Distringas is the first process against a Peer on an information for an intrusion on the King's lands, or for a conversion of the King's goods. *2 Hawk. Pl. C. c. 27. § 12.* cites *Co. Ent. 387.*

If a Peer be impleaded by a Commoner, yet such cause shall not be tried by Peers, but by a Jury of the country; for though the Peers are the proper *fares* to a Lord of Parliament in capital matters, where the life and nobility of a Peer is concerned; yet in matter of property *the trial of fact is not by them,* but by the inhabitants of those counties where the facts arise; since such Peers living through the whole kingdom, could not be generally cognizant of facts arising in several counties, as the inhabitants themselves where they are done; but this want of having Noblemen for their Jury was compensated as much as possible, by returning persons of the best quality; therefore it was formerly necessary, that a Knight should be summoned in any cause where a Peer was party. *G. Hist. C. B. 78, 79.* See title *Jury.*

IV. BLACKSTONE says, that in the method and regulations of its proceedings, the trial by the House of Peers differs but little from the trial *per patriam*, or by Jury; except that no special verdict can be given in the trial of a Peer; because the Lords of Parliament, or the Lord High Steward, (if the trial be had in his Court,) are Judges sufficiently competent of the law that may arise from the fact. *Hutt. 116.* And except also, that the Peers need not all agree in their verdict,

but the greater number, consisting of twelve at the least, will conclude and bind the minority. *Kelynge* 56: *Stat. 7 W. 3. c. 3. § 10: Foster* 247. During a trial before the House of Peers in Parliament, every Peer present on the trial is to judge both of the law and the fact. *Fost.* 142. In cases of the impeachment of a Peer for treason, a Lord High Steward is usually, though not necessarily appointed, rather in the nature of a Speaker to regulate the proceedings than as a Judge. 4 *Comm.* 260: *Fost.* 145. But in the Court of the High Steward, which is held in the recess of Parliament, he alone is to judge in all points of law and practice, and the Peers-triers are merely judges of the fact. *Fost.* 142.

All the Barons of Parliament shall be tried for treason, felony, misprision, or as accessory, at the suit of the King by their Peers. See *Magna Carta*, 9 *H. 3.* 29: 2 *Inst.* 49: 9 *Co.* 30. *b:* *Sta.* 152, 153. So all the nobility who are Peers of Parliament, by the Common Law, which is now affirmed by the *stat.* 20 *H. 6. c. 9.* And a Peer cannot waive the trial by his Peers. *Kel.* 56, *in marg.* 621. 1 *St. Tr.* 265: 2 *Rush.* 94.

It has been adjudged, that if a Peer on arraignment before the Lords, refuse to put himself on his Peers, he shall be dealt with as one who stands mute; for it is as much the law of the land, that a Peer be tried by his Peers, as a Commoner by Commoners; yet if one who has a title to peerage be indicted and arraigned as a Commoner, and plead not guilty, and put himself upon his country, it hath been adjudged that he cannot afterwards suggest that he is a Peer, and pray trial by his Peers. 2 *Hawk. Pl. C. c.* 44. § 19.

By *stat. 7 W. 3. cap. 3. § 10.* it is enacted, That upon the trial of any Peers or Peeresses, for treason or misprision, all the Peers who have a right to sit and vote in Parliament, shall be duly summoned twenty days at least before the trial, and every Peer so summoned and appearing shall vote in the trial, first taking the oaths of allegiance and supremacy, and subscribing and repeating the test enjoined by 30 *Car. 2. st. 2. c. 1.*—Formerly, Lords-triers were appointed by the Crown in the trial of Peers; but this was at length found such an inlet to oppression, as to be deservedly abolished by the above *stat. 7 W. 3.* See title *Treason.* And it seems, that this act extends to every proceeding in full Parliament, for the trial of a Peer in the ordinary course of justice. *Fost.* 247.

By *stat. 6 Ann. c. 23. § 12.* Peers shall be indicted in Scotland as in England.

The Peer being indicted for the treason or felony, before commissioners of oyer and terminer, (or in the King's Bench, if the treason, &c. be committed in the county of *Middlesex.*) then the King by commission under the Great Seal, constitutes some Peer (generally the Lord Chancellor) Lord High Steward, who is Judge in these cases; and the commission commands the Peers of the Realm to be attendant on him, also the Lieutenant of the *Tower*, with the prisoner, &c. A *certiorari* is awarded out of Chancery, to remove the indictment before the Lord High Steward: and another writ issues to the Lieutenant of the *Tower*, for bringing the prisoner; and the Lord High Steward makes his precepts for that purpose, assigning a day and place, as in *Westminster-Hall*, inclosed with scaffolds, &c. and for summoning the Peers, which are to be twelve and above, at least, present: at the day, the Lord High Steward takes place under a cloth

of State; his commission is read by the clerk of the Crown, and he has a white rod delivered him by the usher; which being returned, proclamation is made, and command given for certifying of indictments, &c. and the Lieutenant of the *Tower* to return his writ, and bring the prisoner to the bar; after this, the serjeant at arms returns his precept with the names of the Peers summoned, and they are called over, and, answering to their names, are recorded, when they take their places: the ceremony thus adjusted, the High Steward declares to the prisoner at the bar, the cause of their assembly, assures him of justice, and encourages him to answer without fear; then the clerk of the Crown reads the indictment, and arraigns the prisoner, but is not to insist on his holding up his hand, and the High Steward gives his charge to the Peers; this being over, the King's counsel produce their evidence for the King; and if the prisoner hath any matter of law to plead, he shall be assigned counsel; after evidence given for the King, and the prisoner's answer heard, the prisoner is withdrawn from the bar, and the Lords go to some place to consider of their evidence: but the Lords can admit no evidence, but in the hearing of the prisoner; they cannot have conference with the judges, or demand it, (who attend on the Lord High Steward, and are not to deliver their opinions beforehand,) but in the prisoner's hearing; nor can they send for the opinions of the judges, or demand it, but in open Court: and the Lord Steward cannot collect the evidence, or confer with the Lords, but in the presence of the prisoner; who is at first to require justice of the Lords, and that no question or conference be had, but in his presence. Nothing is done in the absence of the prisoner, until the Lords come to agree on their verdict; and then they are to be together as Juries until they are agreed, when they come again into Court and take their places; and the Lord High Steward, publicly in open Court, demands of the Lords, beginning with the puisne Lord, whether the prisoner, calling him by his name, be guilty of the treason, &c. whereof he is arraigned; who all give in their verdict; and he being found guilty by a majority of votes, such majority being more than twelve, is brought to the bar again, and the Lord Steward acquainting the prisoner with the verdict of his Peers, passes sentence and judgment accordingly; after which an *O Yes!* is made for dissolving the commission, and the white rod is broken by the Lord High Steward; whereupon this grand assembly breaks up, which is esteemed the most solemn and august Court of Justice upon earth. 2 *Hawk. P. C. c.* 44: and see 4 *Comm. c.* 19.

The Lord High Steward gives no vote himself on a trial by commission; but only on a trial by the House of Peers, while the Parliament is sitting; where a Peer is tried by the House of Lords in full Parliament, the House may be adjourned as often as there is occasion, and the evidence taken by parcels; and it hath been adjudged that where the trial is by commission, the Lord Steward, after a verdict given, may take time to advise upon it, and his office continues till he gives judgment. But the triers may not separate upon a trial by commission, after evidence given for the King; and it hath been resolved, that the Peers in such case must continue together, till they agree, to give a verdict. *State Trials*, ii. 702: iii. 657: and see more fully, 2 *Hawk. P. C. c.* 44. § 1—8.

It is said a writ of error lies in the King's Bench of an attainder of a Peer before the Lord High Steward. 2 *Hawk. P. C. c.* 50. § 16,

cites 1 *Sid.* 208. If a Peer be attainted of treason or felony, he may be brought before the Court of *B. R.* and demanded, what he has to say why execution should not be awarded against him? And if he plead any matter to such demand, his plea shall be heard, and execution ordered by the Court, upon its being adjudged against him. 1 *H. 7.* 22. *pl.* 15: *Bro. Coro.* 129: *Fitz. Coro.* 49. Likewise the Court of King's Bench may allow a pardon pleaded by a Peer to an indictment in that Court; to save the trouble of summoning the Peers, merely for that purpose: But that Court cannot receive his plea of not guilty, &c. but only the Lord Steward on arraignment before the Lords. 2 *Inst.* 42.

The sentence against a Peer for treason, is the same as against a common Subject; though the King generally pardons all but beheading, which is a part of the judgment; for other capital crimes, beheading is also the general punishment of a Peer; but *anno 33 H. 8.* the Lord *Dacres* was attainted of murder, and had judgment to be hanged; and *anno 3 & 4 P. & M.* the Lord *Stourton*, being attainted of murder, had judgment against him to be hanged, which sentences were executed; and so in the case of Lord *Ferrers*, 10 *St. Tr.* 478. In this latter case it was determined by all the Judges, that a Peer, convicted of felony and murder, ought to receive judgment for the same, according to the provisions of *stat. 25 Geo. 2. c. 37.* See title *Homicide* III. 3. *ad. fin.* And secondly, Supposing the day appointed by the judgment for execution should lapse before such execution done, that a new time may be appointed for the execution; either by the High Court of Parliament, before which such Peer shall have been attainted, although the office of High Steward be determined; or by the Court of *K. B.* the Parliament not then sitting; and the record of the attainder being properly removed into that Court. *Fost.* 139.

If execution be not done, the Lord Steward may by precept command it to be done according to the judgment. 3 *Inst.* 31.

Trial by Peers is very antient: In the reign of *Will. I.* the Earl of *Hereford*, for conspiring to receive the *Danes* into *England*, and depose the conqueror, was tried by his Peers, and found guilty of treason, *per judicium parium suorum.* 2 *Inst.* 50. The Duke of *Suffolk*, *anno 28 H. 6.* being accused of high treason by the Commons, put himself upon the King's grace, and not upon his Peers, and the King alone adjudged him to banishment; but he sent for the Lord Chancellor, and the Lords who were in town, to his palace at *Westminster*, and also the Duke, and commanded him to quit the kingdom in their presence: The Lords nevertheless entered a protest to save the privilege of their peerage; and this was deemed no legal banishment, for the King's judging in that manner was no judgment; he was extrajudicially bid to absent himself out of the realm; and in doing it, he was taken on the sea and slain. The case of the Lord *Cromwell*, in the reign of King *Henry VIII.* was very extraordinary; this Lord was attainted in Parliament, and condemned and executed for high treason, without being allowed to make any defence. It need only be observed, that this attainder was by a Parliament under the power and influence of *Henry VIII.* See *Parliament. Hist.* 3 *V.* 163. And several great persons during this reign were brought to trial before Lords Commissioners. *Anno 32 Car. 2.* the Lord *Stafford* was tried for treason; and after evidence given for the King, and the prisoner had made his objections to the King's evidence, he insisted upon several points

of law, *viz.* That no overt-act was alleged in his impeachment; that they were not competent witnesses who swore against him, but that they swore for money; and whether a man could be condemned for treason by one witness, there not being two witnesses to any one point, &c. But the points insisted upon being over-ruled, he was found guilty by a majority of twenty-four votes; fifty-five against thirty-one for him. 3 *St. Tr.* 311. He was executed; but in 1685 the attainder was reversed by an act of Parliament, reciting, that he was innocent of the treason laid to his charge, and that the testimony whereon he was found guilty was false.

PEERESS. As we have noblemen, so we have noblewomen, and these may be by creation, descent, or marriage. And first, *Hen. VIII.* made *Anne Bullen* Marchioness of *Pembroke*. *James I.* created *Lady Compton*, wife to *Sir Thomas Compton*, Countess of *Buckingham* in the life time of her husband, without any addition of honour to him; and also made *Lady Finch* Viscountess of *Maidstone*, and afterwards Countess of *Winchelsea*, to her and the heirs of her body. *George I.* made *Lady Sculdingburgh* Duchess of *Kendal*. If any *English* woman takes to husband a *French* nobleman, she shall not bear the title of dignity; and if a *German* woman, &c. marry a nobleman of *England*, unless she be made denizen, she cannot claim the title of her husband, no more than her dower, &c. *Lex Constitution.* 80.

There was no precedent for the trial of Peeresses, when accused of treason or felony, till after *Eleanor*, Duchess of *Gloucester*, wife to the Lord Protector, was accused of treason and found guilty of witchcraft, in an ecclesiastical synod, through the intrigues of Cardinal *Beaufort*. This very extraordinary trial gave occasion to a special statute, 20 *Hen. 6. c. 9.* which declares the law to be, that Peeresses, either in their own right or by marriage, shall be tried before the same judicature as other Peers of the realm. *Moor* 769: 2 *Inst.* 50: 6 *Ref.* 52: *Staundf. P. C.* 152. If a woman, noble in her own right, marries a Commoner, she still remains noble, and shall be tried by her Peers; but if she be only noble by marriage, then by a second marriage with a Commoner, she loses her dignity; for as by marriage it is gained, by marriage it is also lost. *Dyer* 79: *Co. Litt.* 16. Yet if a Duchess Dowager marries a Baron, she continues a Duchess still; for all the nobility are *fares*, and therefore it is no degradation. 1 *Inst.* 16. *b.* 2 *Inst.* 50.

If a Queen Dowager takes a husband, noble or not noble, she by her subsequent marriage shall not lose her dignity. 2 *Inst.* 50. Yet if a woman, noble by descent, marries to an inferior degree of nobility, as if the daughter of a Duke marries a Baron, she shall have precedence only as a Baroness. *Orw.* 82.

A woman noble in her own right, or by a first marriage, marrying a Commoner, communicates no rank or title to her husband. 1 *Inst.* 326. *b.* There have been claims, and supported by authorities, by a husband after issue had, to assume the title of his wife's dignity, and after her death to retain the same as tenant by the curtesy, but it does not seem that such a claim would now be allowed. See 1 *Inst.* 29. *b.* *in n.*

A woman noble by marriage, afterwards marrying a Commoner, is generally called and addressed by the style and title which she bore before her second marriage; but this is only by curtesy, as the daughters of Dukes, Marquisses, and Earls are usually addressed by the

title of Lady; though in law they are Commoners. In a writ of partition brought by *Ralph Howard* and Lady *Anne Powes*, his wife, the Court held that it was a misnomer, and that it ought to have been by *Ralph Howard* and *Anne* his wife late wife of Lord *Powes* deceased. *Dy.* 79.

A Countess or Baroness may not be arrested for debt or trespass; for though, in respect of their sex, they cannot sit in Parliament, yet they are Peers of the Realm, and shall be tried by their Peers, &c. But a *causias* being awarded against the Countess of *Rutland*, it was held that she might be taken by the Sheriff; because he ought not to dispute the authority of the Court from whence the writ issued, but must execute it, for he is bound by oath so to do; and although by the writ itself it appeared, that the party was a Countess, against whom a *causias* would not generally lie, for that, in some cases, it may lie, as for a contempt, &c. therefore the Sheriff ought not to examine the judicial acts of the Court. *6 Rep.* 52.

It hath been agreed, that a Queen Consort, and Queen Dowager, whether she continue sole after the King's death, or take a second husband, and he be a Peer or Commoner; and also all Peeresses by birth, whether sole or married to Peers or Commoners; and all Marchionesses and Viscountesses are entitled to a trial by the Peers, though not expressly mentioned in the *stat.* 20 *H.* 6. c. 9: 2 *Inst.* 50: *Cromb. Jurisd.* 33: 2 *Hawk. P. C. c.* 44. § 10, 11.

PEINE FORT ET DURE; See *Mute*.

PELA, A peel, pile, or fort. The citadel or castle in the *Isle of Man* was granted to Sir *John Stanley* by this name. *Pat.* 7 *H.* 4. m. 18. See *Man, Isle of*.

PELES, Issues arising from, or out of a thing. *Fitzh. Just.* 205.

PELF AND PELFRE, *Pelfra*.] In time of war, the Earl Marshal is to have of preys and booties, all the gelded beasts, except hogs, &c. which is called *Pelfre*. *Old MS.* It is used for the personal effects of a felon convict. *Plac. in Iiin. apud Cestr.* 14 *Hen.* 7.

PELLAGE, The custom or duty paid for skins of leather. *Rot. Parl.* 11 *H.* 4.

PELLICIA, A pilch, *Tunica vel indumentum pelliceum; hinc superpelliceum*, a fur pilch or surplice. *Sfelm.*

PELLIPARIUS, A leatherseller or skinner. *Pat.* 15 *Edw.* 3. p. 2. m. 45.

PELLOTA, Fr. *Pelote*.] The ball of the foot. See 4 *Inst.* 308.

PELT-WOOL, The wool pulled off the skin or pelt of dead sheep. See *stat.* 8 *H.* 6. c. 22.

PEN, A word used by the *Britons* for a high mountain, and also by the ancient *Gauls*; from whence those high hills which divide *France* from *Italy* are called the *Appenines*; and more to the purpose is the name of *Penmaenmawr* in *Wales*. *Camd. Britan.*

PENAL LAWS, Are of three kinds, viz. *Pena pecuniaria*, *pæna corporalis*, and *pæna exilii*. *Cro. Jac.* 415. And penal statutes are made on various occasions, to punish and deter offenders; and they ought to be construed strictly, and not extended by equity; but the words may be interpreted beneficially, according to the intent of the legislators. 1 *Inst.* 54, 268. See 1 *Comm. Introd.* § 3. p. 89. Where a thing is prohibited by statute under a penalty, if the penalty, or part of it, be not given to him who will sue for the same, it goes and belongs to the King. *Rast. Entr.* 433: 2 *Hawk. P. C. c.* 26. § 17. But